① 95-1450

NO. 96-

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1995

ELNORA CAMP, as Administrator of the Estate of ANTHONY YOUNG, Petitioner

-vs-

GEORGE GREGORY, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

This case presents two questions about the application of the doctrine of qualified immunity. The immunized state actor is an agent of the Illinois Department of Children and Family Services ("DCFS") who knowingly and intentionally placed a minor in DCFS custody in the very environment from which the minor had been removed because of inability to supervise and protect him from the risk of physical harm. The DCFS agent further lied under oath to conceal his noncompliance with legal requirements, thereby permitting and causing the minor to be in a position to be killed.

The first question is whether, in light of the special relationship between the state and a minor formally placed in state custody, this Court's enunciation of a state's duty to protect the physical safety of those in its custody in Youngberg v. Romeo, 457 U.S. 307, 107 S. Ct. 2452, 73 L. Ed. 2d 28 (1982), and Youngberg's considerable progeny prior to 1991 applying the decision to minors in foster care, constituted clearly-established law placing a reasonable DCFS agent on notice that what he was doing violated a constitutional right.

The second question, a question this Court left open in Davis v. Scherer, 468 U.S. 183, 104 S. Ct. 312, 82 L. Ed. 2d 139, 104 S. Ct. 3012 (1984), is whether the DCFS agent's knowing and deliberate violation of extensive mandatory regulations enacted by the DCFS eliminated the agent's claim of qualified immunity where those regulations gave rise to, or at the very least bore upon, the minor's constitutionally protected entitlement and cause of action under 42 U.S.C. Section 1983.

This Court's review of these questions, sought under United States Supreme Court Rule 10.1(c), would settle important questions about the application of the qualified immunity doctrine in the contexts of both the "special relationship" doctrine and the "entitlement" doctrine as sources of constitutionally protected rights.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1995

No. 96-

ELNORA CAMP, as Administrator of the
Estate of ANTHONY YOUNG,
Petitioner

v.

GEORGE GREGORY,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPINIONS DELIVERED IN CASE

The District Court did not deliver an opinion in the instant case. The opinion of the Seventh Circuit Court of Appeals is not yet published but is set forth in full in Appendix A.

JURISDICTIONAL STATEMENT

The petitioner filed a complaint and first amended complaint in the District Court for the Northern District of Illinois alleging a violation of 42 U.S.C. Section 1983 and invoking the District Court's jurisdiction under 28 U.S.C. Section 1331 and 1334. After these complaints were dismissed under Federal Rule of Civil Procedure 12(b)(6), the petitioner appealed to the Circuit Court of Appeals for the Seventh Circuit, invoking that Court's jurisdiction under 28 U.S.C. Section 1291.

The Seventh Circuit Court of Appeals affirmed the District Court's order of dismissal on October 2, 1995, and denied Camp's Petition for Rehearing on October 23, 1995. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1), and the Petition for Certiorari is timely filed under United States Supreme Court Rule 13.4.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the United States, Fourteenth Amendment, Section 1 [emphasis added]

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the depriva-

> tion of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. Section 1983.

The text of Ill. Rev. Stat., 1991, Ch. 23, Section 5005, is set forth in its entirety in Appendix C.

Regulations promulgated by the Illinois Department of Children and Family Services and governing foster care placement with a relative, known as Title 89, Chapter III, Subchapter b, Part 335, are set out in their entirety in Appendix D.

STATEMENT OF THE CASE

On December 30, 1992, Elnora Camp filed a complaint in the District Court for the Northern District of Illinois under 42 U.S.C. Section 1983, invoking that Court's jurisdiction under 28 U.S.C. Sections 1331 and 1334. (Doc. 1) That complaint was dismissed, the District Court holding under this Court's opinion in DeShaney v. Winnebago County Department of Social Services, 489 U.S. 198, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989), that it failed to state a cause of action. (Supplemental Record, at 1-2) Camp subsequently filed a First Amended Complaint (Doc. 25) that alleged the following:

Prior to June 25, 1991, Elnora Camp became the guardian of Anthony Young, her minor nephew, due to Anthony's mother's medical condition. (Doc. 25, at 1) However, Camp's employment outside her home made it impossible for her to provide the kind of structured and supervised environment necessary to assure Anthony's safety and well-being, and she requested termination of her private guardianship. (Doc. 25, at 1) On June 25, 1991, by agreement, the Circuit Court of Cook County awarded guardianship of Anthony to the Department of Children and Family Services of the State of Illinois ("DCFS") and retained jurisdiction to monitor the provision of services to and placement of Anthony Young by the DCFS. (Doc. 25, at 1-2) The DCFS referral form, completed by an officer of the Cook County Juvenile Court Probation Department on June 19, 1991, recommended a very structured environment for Young. (Doc. 25, at 3)

The amended complaint alleged that the court's award of guardianship and legal custody of Young to the DCFS created a special relationship between the DCFS and Young, and a corollary entitlement in Young, and placed responsibility upon the DCFS to assure his protection, training, discipline, food, shelter, education, and ordinary medical care. (Doc. 25, at 2) Defendant George Gregory, Young's DCFS caseworker, knew or reasonably should have known that the reason the DCFS was granted custody and guardianship was Young's greater than normal exposure to the threat of physical harm from the environment in and around the Camps' home, as well as his need for educational and vocational training and personal counseling. (Doc. 25, at 3) Despite such knowledge, Gregory placed

Young back in the same high-risk environment of the Camps' home. (Doc. 25, at 4) On September 20, 1991, Gregory intentionally represented falsely under oath to the Circuit Court of Cook County that Young's placement with plaintiff Elnora Camp had been at the request of the Camp family and that Young was attending school and "doing fine." (Doc. 25, at 5)

On September 30, 1991, Elnora Camp wrote a letter to Gregory requesting referral and services for Young, informing Gregory that Young was not attending school and was placing himself in situations jeopardizing his physical safety, and stating that her telephone calls to Gregory had gone unanswered and that she was powerless to ensure Young's safety. (Doc. 25, at 5) Gregory still took no action, and, on December 30, 1991, Young was killed. The First Amended Complaint alleged that Gregory's acts and omissions denied Young the services to which he was entitled under Illinois law, directly and proximately caused Young's death, and deprived Young of the rights guaranteed him under the Fourteenth Amendment of the United States Constitution. (Doc. 25, at 6).

The Petitioner's First Amended Complaint was also dismissed (Doc. 24), and Camp appealed to the Circuit Court of Appeals for the Seventh Circuit. (Doc. 26) In that Court, she argued that placement of official custody of Anthony in the State of Illinois created a special relationship between him and the state that distinguished this case from the facts of DeShaney. She also raised the argument, held waived in DeShaney (489 U.S., at 195 n. 2), that the elaborate network of statutes and regulations in Illinois mandating adequate supervision of Young created a constitutionally enforceable entitlement within the meaning of the "liberty" interest protected by the Fourteenth Amendment due process clause.

In an opinion issued on October 2, 1995, the Seventh Circuit Court of Appeals agreed with Camp that the result in DeShaney does not govern this case because the DCFS assumed official custody of Young, a point of distinction made by this Court in DeShaney itself (489 U.S., at 201 n. 9). Camp accordingly stated a cause of action under Section 1983. The Court held specifically:

> ...[W]e believe a child placed in the guardianship of the state has a due process right not to be placed by the state with a custodian whom the state knows will fail to exercise the requisite degree of supervision over the child.
>
> * * * *
>
> [W]e believe that when a DCFS caseworker cannot provide reasonable supervision, and the failure to provide that degree of supervision and care results in injury to the child outside of the home, it might be appropriate, depending upon the facts culminating in the injury, for the caseworker to be held liable for a deprivation of liberty.

Appendix A, at 19-20a,27a. However, the Court held, under this Court's test in Harlow v. Fitzgerald, 457 U.S. 800, 73 L.

Ed. 2d 396, 410, 102 S. Ct. 2727 (1982), that Gregory was entitled to qualified immunity on the ground that his conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The Court denied Camp's Petition for Rehearing on October 23, 1995.

ARGUMENT

In both the District Court and the Court of Appeals, the petitioner presented two independent grounds supporting her Section 1983 claim. She argued that a special relationship existed between Anthony Young and the state, which had assumed custody of him, that distinguished his situation from that of the injured minor in DeShaney v. Winnebago County Department of Social Services, 489 U.S. 198, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989). She also argued that the extensive regulations enacted by the DCFS pursuant to its statutory mandate created a constitutionally protected interest or entitlement within the meaning of this Court's opinion in Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 104 L. Ed. 2d 506, 109 S. Ct. 1904 (1989). This Court recognized the entitlement theory as conceptually distinct from the "special relationship" theory in DeShaney but declined to address it on grounds of waiver. 489 U.S. at 195 n. 2.

Although the Circuit Court of Appeals did not separately analyze each of these independent grounds, it did incorporate elements of both in its conclusion that Young indeed had a Fourteenth Amendment due process liberty interest in supervision adequate to assure at least a modicum of safety. Specifically, the Court found De-

Shaney distinguishable with respect to the "special relationship" theory addressed therein because the State affirmatively assumed custody of Young and therefore responsibility for his well-being, including his safety. The Court also made extensive references to Illinois regulatory law imposing on Gregory as Young's caseworker a duty to assure supervision of Young.

Recognizing that the DCFS was made Young's court-appointed guardian because Camp did not believe she could provide him adequate care and supervision (Appendix A, at 15a), the Court stated,

> [W]e do not suppose that anyone would think it appropriate for the DCFS to knowingly place a child with adults who provided food, shelter, and clothing, but who routinely left the child unattended and unsupervised -- be that child six years old or sixteen. See, e.g., In re B.T., 561 N.E. 2d 1269 (Ill. App. 1990); 720 ILCS 5/12-21.5 (Smith-Hurd 1995 Supp.); 720 ILCS 640/1 (Smith-Hurd 1993). Indeed, DCFS regulations explicitly incorporate the responsibility of supervision in the criteria for foster parents. Ill. Admin. Code tit. 89, Sec. 335.318(c), (d) (1995). Thus, we believe a child placed in the guardianship of the state has a due process right not to be placed by the state with a custodian whom the state knows will fail to exercise the requisite degree of supervision over the child.
>
> * * * *

> Commensurate with the parental obligation to supervise a child's activities outside the home is a duty on the part of the state not to place one of its charges with an adult that it knows will not or cannot exercise that responsibility. The DCFS regulations governing placement with relative caretakers recognize that responsibility, specifying as a pre-condition to approval that the DCFS staff must find that 'supervision of the related child(ren) can be assured at all times including times when the related caregiver is employed or otherwise engaged in activity outside of the home.' Ill. Admin. Code tit. 89 Sec. 335.202(c)(7) (1995). Thus, we believe that when a DCFS caseworker places a child in a home knowing that his caretaker cannot provide reasonable supervision, and the failure to provide that degree of supervision and care results in injury to the child outside of the home, it might be appropriate, depending upon the facts culminating in the injury, for the caseworker to be held liable for a deprivation of liberty.

(Appendix A, at 19-20a, 26-27a)

The regulations to which the Court referred, and of which Gregory was charged with knowledge, were the result of a statutory mandate requiring the DCFS not only to care for and train any child or dependent committed to its custody, Ill. Rev. Stat., 1991, Ch. 23, Section 5005(k); Ch.

23, Section 5005(h), but also to promulgate rules and regulations governing the operation of its programs, including foster care placement of children. Ill. Rev. Stat., 1991, Ch. 23, Section 5005(g). Such regulations specifically addressed placement of minors like Young, for whom the DCFS was legally responsible, in homes of relatives. These regulations, published as 89 Illinois Administrative Code Ch. 111, Section 335, Subchapter b (Appendix D), remained effective up to and including the date of Anthony Young's death.

Under these extensive regulations, Gregory was required, in the absence of a written waiver, to assure that Elnora Camp met prescribed standards, and Anthony Young was not to be placed with her unless specified preconditions were met. Section 335.200. One of those mandatory preconditions was responsible, age-appropriate supervision at all times, including those times when Camp was employed or engaged in activity outside the home. Sections 335.200(c), 335.308(c). Adequate supervision was deemed to include efforts to assure compliance with all laws. Section 335.310(c). Any plan for supervision other than by Camp was to be in writing and approved by the DCFS, and approval was not to be given if it appeared that such a plan jeopardized Young's health, safety, or welfare. Section 335.318(c). Gregory was required to assure that Young did not remain in Camp's care more than ninety days unless she had been approved as meeting the prescribed standards or a written waiver had been granted by the Director. Sections 335.100, 335.202(b), 335.202(e).

Charged with responsibilities for Young which she was unable to fulfill and which had caused her to seek state custody of Young in the first place, Camp was nevertheless forbidden to seek any other placement for Young unless authorized to do so by the DCFS. Section 335.200(b)(2). Meanwhile, in blatant violation of the regulations that governed his conduct as an agent of the DCFS, Gregory failed either to assure that Camp met the required standards or to seek a written waiver. He failed to assure that Camp, who was employed, could provide age-appropriate supervision. He failed to document how the regulatory preconditions could be met. He failed to demand and approve the required written plan for supervision by someone other than Camp when she was not present. He failed to assure that Young did not remain in his aunt's care in excess of ninety days unless she was approved as meeting the prescribed standards or a waiver had been granted by the Director. Finally, Gregory deliberately lied under oath in court to conceal these violations.

In light of such facts, the determination of Gregory's qualified immunity goes far beyond the state of the "special relationship" doctrine in 1991; it necessarily encompasses Gregory's knowledge of the mandatory regulations that provided the basis of Young's entitlement to appropriate supervision. An examination of each of these approaches reveals that the law was clearly established in 1991 in both contexts and that Gregory is not entitled to qualified immunity.

Qualified immunity exists only when official conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S.

800, 73 L. Ed. 2d 396, 410, 102 S. Ct. 2727 (1982). The test of qualified immunity is therefore whether a reasonable official in Gregory's position would understand that what he is doing violates a constitutional right. Anderson v. Creighton, 483 U.S. 635, 640, 107 S. Ct. 3034, 3039, 97 L. Ed. 2d 523 (1987). Although the Circuit Court of Appeals in this case found qualified immunity on the ground Camp failed to cite a decision recognizing a constitutional right to adequate supervision specifically (Appendix A, at 30a), Camp was not required to produce a prior case precisely on all fours on the facts and law involved in the case in issue. McDonald v. Haskins, 966 F. 2d 292, 293 (7th Cir. 1992).

With respect to the "special relationship" theory, this Court has long held that a state has a duty to provide for the physical safety of those in its custody. In Youngberg v. Romeo, 457 U.S. 307, 107 S. Ct. 2452, 73 L. Ed. 2d 28 (1982), decided nine years before Anthony Young was killed, this Court held that the State must provide involuntarily committed mental patients with services necessary to insure their reasonable safety. 457 U.S. at 317, 102 S. Ct. at 2458. Examining the principle of Youngberg in the foster care context, this Court observed even in DeShaney that a state, when it takes a person into its custody, has a constitutionally-imposed duty to assume some responsibility for that person's safety and general well-being. 489 U.S. at 199-200, 109 S. Ct. at 1005-06.

> Had the State by the affirmative exercise of its power removed Joshua from free society and placed him in a foster home operated by its agents, we might

> have a situation sufficiently analogous to incarceration or institutionalization to give rise to an affirmative duty to protect.

489 U.S. at 201 n. 9.

Application of the Youngberg principle to foster care was well-established in cases within the Seventh Circuit long before 1991, when Young was killed. The District Court held twice in 1989 that a Section 1983 claim is stated for injuries suffered in a foster home where the state is deliberately indifferent to the likelihood a foster home is unsafe but places the child there despite the risk. B.H. v. Johnson, 715 F. Supp. 1387, 1395-96 (N.D. Ill. 1989); Aristotle P. v. Johnson, 721 F. Supp. 102 (N.D. Ill. 1989). One year later, a state court found a protectible liberty interest requiring minimally adequate care and treatment of children in DCFS custody who had no placement plans other than a return to the streets. In Interest of V.H., 197 Ill. App. 3d 52, 143 Ill. Dec. 751, 755, 554 N.E. 2d 686 (1st Dist. 1990).

Also in 1990, the Seventh Circuit Court of Appeals recognized in K.H. through Murphy v. Morgan, 914 F. 2d 846 (7th Cir. 1990), that there is a distinction between private family care like that in DeShaney and state foster care. Having removed a child from the family's custody, the state

> could no more place her in a position of danger, deliberately and without justification, without thereby violating her rights under the due process clause of the Fourteenth Amendment than it

> could deliberately and without justification place a criminal defendant in a jail or prison in which his health or safety would be endangered....In either case the state would be a doer of harm rather than merely an inept rescuer.... [H]aving removed [the minor] from [the parents'] custody the state assumed at least a limited responsibility for her safety.... The Illinois Department of Children and Family Services could not have subjected K.H. to sexual abuse and then defended on the ground that by doing this it did not make her any worse off than she would have been had she been left with her parents....Once the state assumes custody of a person, it owes him a rudimentary duty of safekeeping no matter how perilous his circumstances when he was free.

914 F. 2d at 849 [emphasis added].

If the Department through its agents must have known that the child was being placed in homes damaging to her mental health, "the ingredients of a valid constitutional claim are present." 914 F. 2d at 850.

Other Circuit Courts of Appeals had also recognized well before Anthony Young died that the relationship between the state and children in foster care imposes affirmative duties upon the state with respect to the children's well-being. In Taylor by and through Walker v. Ledbetter, 818 F. 2d 791 (11th Cir. 1987), cert den. 489 U.S. 1065, 103 L. Ed. 2d 808, 109 S.

Ct. 1337 (1989), the 11th Circuit Court of Appeals pointed out that a minor in foster care retains a liberty interest in the safety of his environment and the right to personal security, yet is deprived of the ability to seek alternative living arrangements. In that case, a primary goal of placing the child in the foster home was to assure the child's physical safety. The Court held,

> The state's action in assuming the responsibility of finding and keeping the child in a safe environment placed an obligation on the state to insure the continuing safety of that environment. The state's failure to meet that obligation, in the absence of overriding societal interests, constituted a deprivation of liberty under the fourteenth amendment.

818 F. 2d at 795.

Following both Taylor and DeShaney, the Sixth Circuit Court of Appeals decided Meador v. Cabinet for Human Resources, 902 F. 2d 474 (6th Cir. 1990). In that case, a complaint alleged that minors had been placed in a foster home despite reports of prior sexual abuse there and despite the foster mother's warning that the children would be at risk. The Sixth Circuit Court held that due process extends the right to be free from infliction of unnecessary harm to children in state-regulated foster homes. 902 F. 2d at 476. Thus, there can be no doubt that case law firmly established a basic due process right of a minor in state custody to protection from unnecessary harm at the time of Gregory's acts and omissions. Supervision as a component of that protection is hardly an extension of the law so far removed that a reasonable official in Gregory's position could not have conceived of its necessity.

Surely any doubt that a modicum of supervision is a fundamental ingredient of a minor's due process right to personal safety while in foster care was removed in the instant case by the web of state regulations mandating far more. To be sure, this Court's opinion in Davis v. Scherer, 468 U.S. 183, 104 S. Ct. 312, 82 L. Ed. 2d 139, 104 S. Ct. 3012 (1984), makes clear that a violation of a state regulation does not in and of itself eliminate an official's right to qualified immunity. However, this Court in Davis clarified that the regulation there was irrelevant to the merits of the underlying constitutional claim and that the plaintiff had made no contention that the regulatory violation even bore upon the constitutional right in issue. 468 U.S. at 191, 193, 82 L. Ed. 2d at 148, 149. This Court stated that officials may well become liable for damages suffered as the result of violations of rights conferred by statute or regulation if it is the violation of statutory or regulatory rights that gives rise to the cause of action itself. 468 U.S. at 194 n. 12, 82 L. Ed. 2d at 149 n. 12. Thus,

> Davis left open whether an official might lose qualified immunity protection for violating a state law that "bears upon the claim of constitutional right that [the plaintiff] asserts under Section 1983." Thus, there may be a distinction between violations of state law that are "irrelevant" to the merits of

> the plaintiff's constitutional claim, which was the case in Davis, and violations of state law that bear on the constitutional issue, which Davis suggests may be relevant on the immunity issue.

1 M. Schwartz and J. Kirklin, Section 1983 Litigation: Claims, Defenses, and Fees, Section 9.19 (2d ed. 1991), cited in Poulsen v. City of North Tonawanda, N.Y., 811 F.S. 884 (W.D. N.Y. 1993).

This language in Davis was construed and applied in Spruytte v. Walters, 753 F. 2d 498 (6th Cir. 1985), cert. den. 474 U.S. 1054, 106 S. Ct. 788, 88 L. Ed. 2d 767 (1986), with respect to a state prison regulation allowing inmates to receive books that did not threaten security. The Sixth Circuit Court of Appeals held that the regulation conferred on an inmate a property interest or entitlement under the Fourteenth Amendment due process clause. The Court then analyzed the impact of this determination upon a claim of qualified immunity. Citing this Court's language in Davis, the Court stated:

> ...[I]n the context of a violation of due process, the critical distinction between regulations that bear upon the constitutional right and those that do not is collapsed into the distinction between regulations that give rise to the protected interest and regulations that merely provide what process is due once a protected interest has been found.

> ...In Scherer [v. Davis], the claimant did not allege that state officials failed to abide by the substantive criteria by which the decision whether to discharge him was to be made; he merely alleged that officials violated a regulation that specified the procedures to be used in making the substantive determination. By contrast, the officials here violated...the very rule that creates a protected interest and defines the criteria that must be fulfilled before the interest may be defeated. Because the officials violated that rule and the rule was clearly established at the time of the violation, the officials are not entitled to immunity.

753 F. 2d at 511.[1] See also Huron Valley Hospital, Inc. v. City of Pontiac, 792 F. 2d 563 (6th Cir. 1986), cert. den. 479 U.S. 885, 17 S. Ct. 278, 93 L. Ed. 2d 254 (1986) [knowing violation of state statute that created constitutionally protected interest in certificate of need to construct hospital eliminated defense of qualified immunity]; Ayeni v. Mottola, 35 F. 3d 680 (2d

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[1] Spruytte was recently cited by this Court as an example of undesirable intermeddling with day-to-day prison management. Sandin v. Connor, __ U.S. __, 115 S. Ct. 2298, __ L. Ed. 2d __, 63 U.S.L.W. 4604 (1995). However, this Court's holding in Sandin was strictly limited to the prison context and did not undermine the general force of Spruytte's interpretation and application of Davis.

Cir. 1994) [violation of statute "bears upon" claim under Fourth Amendment, satisfying Davis exception].

In the instant case, Camp alleged in her amended complaint that the extensive, specific, and mandatory DCFS regulations requiring adequate supervision of Anthony Young while in foster care provided, alternatively to the "special relationship" doctrine, the predicate for a constitutionally protected interest, as did the regulation in Spruytte. Other Circuit Courts of Appeals had held prior to 1991 that comparable foster care regulations gave rise to a constitutionally protected entitlement. Taylor by and through Walker v. Ledbetter, 818 F. 2d 791 (11th Cir. 1987), cert den. 489 U.S. 1065, 103 L. Ed. 2d 808, 109 S. Ct. 1337 (1989); Meador v. Cabinet for Human Resources, 902 F. 2d 474 (6th Cir. 1990). At the very least, the DCFS regulations "bore upon" the constitutionally-imposed duty of the DCFS to assume some responsibility for Young's safety and general well-being while in DCFS custody.

Gregory's flagrant violations of those regulations, compounded by intentional misrepresentations under oath about compliance with them, easily sufficed to remove his acts and omissions from the intended sphere of qualified immunity. The conclusion of the Seventh Circuit Court of Appeals to the contrary is belied not only by the weight of clearly-decided case law in 1991, but by Gregory's deliberate disregard for the very rules which governed his official conduct and independently supported Young's due process liberty interests.

CONCLUSION

For all of the foregoing reasons, the Petitioner, Elnora Camp, respectfully urges that this Court's review is important and desirable in order to remedy a decision in conflict with the weight of authority and to clarify and amplify this Court's language in DeShaney and Davis about the meaning and contours of qualified immunity in the context of a constitutional entitlement based on state statutes and regulations as well as the special relationship between the state and a minor in its custody.

Respectfully submitted,

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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 93-3314

ELNORA CAMP, as Administrator of the
Estate of Anthony Young, Deceased,
Plaintiff-Appellant,

v.

GEORGE GREGORY,
Defendant-Appellee.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division

No. 92 C 8424-James B. Moran, Chief Judge*

Argued September 8, 1994-
Decided October 2, 1995

Before COFFEY and ROVNER, Circuit Judges, and FOREMAN, District Judge.**

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* Judge Moran relinquished his position as Chief Judge while this appeal was under advisement.

** The Honorable James L. Foreman, of the Southern District of Illinois, sitting by designation.

ROVNER, Circuit Judge. Anthony Young died on his sixteenth birthday. At the time of his death, Anthony was under the guardianship of the Illinois Department of Children and Family Services ("DCFS"). His aunt and former guardian, Elnora Camp, brought this suit contending that George Gregory, the DCFS caseworker assigned to Anthony, had denied Anthony substantive due process by failing to ensure that Anthony was placed in a safe living environment. The district court dismissed the suit, believing that the Supreme Court's decision in DeShaney v. Winnebago County Dep't of Social Services, 489 U.S. 189, 109 S. Ct. 998 (1989)) shielded Gregory from liability for his decision where to place Anthony. Because the DCFS had assumed guardianship over Anthony, we do not think DeShaney necessarily bars Camp's due process claim. However, we do conclude that Gregory is entitled to qualified immunity, as prior caselaw did not make clear that a state official could be liable under facts analogous to those alleged here.

I. FACTS

Our recitation of the facts derives from the allegations of Camp's amended complaint.[1] For present purposes, we accept these allegations as true, extending to Camp the benefit of every reasonable inference that may be drawn from the amended complaint. Leatherman v. Tarrant County

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[1] Mr. Gregory contends that the district court erred in allowing Ms. Camp to file her amended complaint after the court had already entered a judgment of dismissal based on the original complaint. We take that question up below.

Narcotics Intelligence & Coordination Unit, 113 S. Ct. 1160, 1161 (1993); MCM Partners, Inc. v. Andrews-Bartlett & Assocs., Inc., No. 94-3019, 1995 WL 475702, at *3 (7th Cir. Aug. 11, 1995). We may affirm the dismissal of that complaint only if "it appears 'beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief.'" Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596 (1972) (per curiam) (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102 (1957)); see also Graehling v. Village of Lombard, Ill., 58 F.3d 295, 297 (7th Cir. 1995).

The DCFS became Anthony's guardian on June 25, 1991, by order of the Circuit Court of Cook County, Illinois. Prior to that time, Camp had assumed guardianship of Anthony from his mother, whose medical condition rendered her unable to care for him. Camp ultimately sought appointment of another guardian, however, after concluding that she could not provide the highly structured and closely supervised environment necessary to assure Anthony's safety and well-being.[2] The state court granted her request and by agreement appointed the DCFS Anthony's guardian. Gregory was subsequently assigned to be Anthony's caseworker.

A DCFS referral form completed by a probation officer assigned to the Cook County Juvenile Court recommended that Anthony be placed in a highly structured environment. Despite knowing that Camp could not provide the degree of supervision and care that Anthony required and that Anthony faced a greater than normal risk of physical harm while living in her home, Gregory returned him to Camp's care. Subsequently, he neglected to make any referral or application for any appropriate educational or guidance program and failed to follow up on Anthony's progress. Yet, on September 20, 1991, he represented under oath to the state court (which had retained jurisdiction over Anthony's case to monitor his progress) that Anthony had been returned to Camp at the request of the Camp family, that Anthony was attending school, and that he was "doing fine." Amended Complaint ¶ 13. Each of these representations was false and Gregory knew as much.

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[2] The amended complaint does not reveal the reason for the degree of structure and supervision that Anthony allegedly required.

Ten days later, on September 30, 1991, Camp wrote to Gregory noting that her previous telephone calls to him had gone unanswered. She requested information concerning appropriate referrals and advised Gregory that Anthony was not attending school and was "placing himself in situations jeopardizing his physical safety as well as his education." Amended Complaint ¶ 14. She also reiterated that she could not ensure Anthony's safety.

Anthony remained in Camp's care until he died on December 30, 1991. Camp contends that his death resulted directly from Gregory's failure to arrange for Anthony to be placed in an appropriate environment and to be given the types of services he required in order to ensure his safety and well-being.

II. AMENDMENT OF THE COMPLAINT

Before we address the viability of Camp's claims, we must first consider whether the district court abused its discretion in permitting her to file an amended complaint. The district court granted Gregory's motion to dismiss the original complaint in an opinion dated August 10, 1993. That opinion was entered on the docket on the following day along with a civil judgment form stating that "defendant's motion to dismiss is granted." R. 22. On September 10, 1993, the parties appeared before the court on the plaintiff's motion for leave to file an amended complaint. Gregory's counsel objected to the request, contending that final judgment had been entered terminating the case and that the court consequently lacked jurisdiction to entertain the motion. The district court opted to construe Camp's papers as both a motion for relief from the judgment under Fed.R.Civ.P. 60(b), which it granted, as well as a motion for leave to file an amended complaint, which it also granted. However, convinced that the amended complaint still did not present a viable claim, the court entertained Gregory's oral request to dismiss the new complaint and granted that request as well.

Here, Gregory renews his contention that the district court was without jurisdiction to entertain Camp's motion for leave to file an amended complaint and that we should therefore confine our attention to the original complaint. One might think this argument was rendered moot by the district court's decision to dismiss the amended complaint for the same reasons it disposed of the first. There are significant differences between the two complaints, however. In particular, the original complaint alluded to Anthony's "history of ongoing street-gang involvement" (Complaint ¶ 10(c)), and in its opinion granting the motion to dismiss that complaint, the district court "read[] between the lines" and assumed that Anthony was a gang member and that his death was gang related. Mem. Op. at 1. The court went on to hold that "a claim under 42 U.S.C. § 1983 cannot be founded on a gang-related killing, at least not in the circumstances alleged." Id. at 1-2. (We do not know, on the present record, whether Anthony's death was in fact gang related.) To the extent the viability of the complaint turns on whether Anthony's death occurred outside of the Camp household at the hands of third parties, omission of the reference to gang involvement arguably strengthens the complaint.

Federal Rule of Civil Procedure 15(a) dictates that leave to amend a pleading "shall be given whenever justice so requires," see Sanders v. Venture Stores, Inc., 56 F.3d 771, 773 (7th Cir. 1995); and, indeed, the rule expressly grants a plaintiff one opportunity to amend her complaint as a matter of course before a responsive pleading is served. A motion to dismiss does not constitute a responsive pleading for purposes of Rule 15(a); thus, an order dismissing the original complaint normally does not eliminate the plaintiff's right to amend once as a matter of right. See Bieneman v. City of Chicago, 838 F.2d 962, 963 (7th Cir. 1988) (per curiam); Willhelm v. Eastern Airlines, Inc., 927 F.2d 971, 972 (7th Cir. 1991). If final judgment is entered dismissing the case, however, the plaintiff loses that right. Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1111 (7th Cir. 1984), cert. denied, 470 U.S. 1054, 105 S. Ct. 1758 (1985); see also Vicom, Inc. v. Harbridge

Merchant Servs., Inc., 20 F.3d 771, 784 (7th Cir. 1994). At that juncture, the plaintiff must either appeal the dismissal or seek to have the case reopened so that she may pursue amendment of the complaint. Car Carriers, 745 F.2d at 1111; see also Rothner v. City of Chicago, 929 F.2d 297, 300 (7th Cir. 1991). Camp opted to follow the latter course here, although she did so under the guise of a Rule 15(a) motion alone, without first seeking relief from the judgment pursuant to Fed.R.Civ.P. 59(e) or 60(b).

Under the circumstances presented, we do not find Camp's failure to file a Rule 59 or 60 motion fatal to the amended complaint. As Gregory points out, we have held that once final judgment has been entered, the district court lacks jurisdiction to entertain a motion for leave to amend the complaint unless the plaintiff also moves for relief from the judgment. Paganis v. Blonstein, 3 F.3d 1067, 1073 (7th Cir. 1993); see also Garner v. Kinnear Mfg. Co., 37 F.3d 263, 270 (7th Cir. 1994); Harris v. City of Auburn, 27 F.3d 1284, 1286-87 (7th Cir. 1994); Vicom, 20 F.3d at 784 & n.12 (7th Cir. 1994). Our cases also suggest that when the plaintiff files a motion for leave to amend alone, the court is not obligated to construe it as a simultaneous request for relief under Rules 59 or 60. See Vicom, 20 F.3d at 784-85 & n.13. But we have never held that a district court may not do so. On the contrary, absent a showing of prejudice to the defendants, we believe that the district court retains the discretion to treat a Rule 15(a) motion as one also made under Rules 59 or 60. See Car Carriers, 745 F.2d at 1112 (district court correct to characterize plaintiff's "Motion for Leave to File an Amended Complaint" as a motion for relief under Rule 59(e) or 60(b)); Paganis, 3 F.3d at 1074 (Cudahy, J., concurring) (suggesting that "a requirement of two separate pieces of paper may serve only a formalistic end"). Gregory has identified no prejudice to himself in the district court's decision to so construe Camp's motion, nor has he otherwise demonstrated that the court's liberal interpretation of the motion constituted an abuse of discretion.

Gregory goes on to argue that the district court erred in granting relief under Rule 60(b). It is true that relief under Rule 60(b) is an extraordinary remedy reserved for the exceptional case (e.g., Dickerson v. Bd. of Educ. of Ford Heights, Ill., 32 F.3d 1114, 1116 (7th Cir. 1994)), and the mere desire to expand the allegations of a dismissed complaint does not, by itself, normally merit lifting the judgment. See Car Carriers, 745 F.2d at 1112; Garner, 37 F.3d at 270. Nonetheless, whether to grant a Rule 60(b) motion is a question committed to the district court's discretion, and our review is correspondingly limited. E.g., Mares v. Busby, 34 F.3d 533, 535 (7th Cir. 1994). We detect no abuse of the court's discretion here. In granting the defendant's motion to dismiss the original complaint, the district court had "read[] between the lines" of a complaint that "state[d] very few facts." Mem. Op. at 1. Lack of factual clarity is normally a flaw that can be corrected through amendment of the complaint, and in seeking leave to amend, Camp's counsel reminded the district court that while the motion to dismiss was under advisement, he had sought and received assurance from the court that he be given an opportunity to replead in the event the original complaint were dismissed. R. 30 at 2, 4-5. The court itself pointed out that the amended complaint "does certainly state with greater particularity where [Camp] [is] coming from...." R. 30 at 5. In that sense, the amendment aided the district court's evaluation of the claim, as it has our own. Thus, although the court remained convinced that Camp still did not have a viable cause of action, we do not think it was an abuse of discretion to grant Camp permission to file the amended complaint.

We are not confident in any event that the district court had, in fact, entered final judgment in advance of Camp's request to amend the complaint. In moving for dismissal, Gregory had not specified whether he sought dismissal of the complaint or dismissal of the case. Likewise, in granting the motion, the district court merely noted in its opinion and accompanying minute order that "defendant's motion to dismiss is granted." True, the deputy clerk's preparation and entry of an AO 450 judgment form would tend to suggest that the court meant to enter final judgment. Yet, we have deemed a Rule 58 judgment reflecting the dismissal of the complaint rather than dismissal of the case not to constitute a final order terminating the litigation for purposes of appeal. Benjamin v. United States, 838 F.2d 669, 671-72 (7th Cir. 1987); cf. Paganis, 3 F.3d at 1070 (judgment form not ambiguous as to finality where, inter alia, "the judgment did not simply grant a motion"). Here, the judgment form merely repeated that the motion to dismiss was granted, without specifying whether the complaint alone was dismissed -- leaving intact Camp's right to amend the complaint once as a matter of course, Bieneman, 838 F.2d at 963 -- or that the case was dismissed -- requiring her either to appeal or seek relief from the judgment and then leave to amend. In construing Camp's Rule 15(a) motion generously, the district court itself appeared to recognize that the judgment form was potentially ambiguous. R. 30 at 6-7. Under these circumstances, we think that district court acted well within its discretion in granting leave to amend.

III. SUBSTANTIVE DUE PROCESS CLAIM

Relying on the Supreme Court's decision in DeShaney v. Winnebago County Dep't of Social Servs., 489 U.S. 189, 109 S. Ct. 998 (1989), Gregory argues that "Anthony had no constitutional right to have his DCFS caseworker protect him from being killed in a gang-related incident in his neighborhood." Gregory Br. at 13. This argument arguably narrows the complaint prematurely. As we have noted, the amended complaint omits any reference to Anthony's gang involvement; but even the original complaint merely noted that Anthony had a history of gang involvement -- it did not allege that Anthony's death was tied to this activity. Thus, the precise circumstances of Anthony's death are not at all clear at this juncture. Yet, it does seem reasonable, in light of what has been alleged, to assume that Anthony's death occurred outside of his home at the hands of someone other than a family member. The essence of Camp's claim, after all, is not that she or someone else in the Camp household posed a danger to Anthony, but that she was unable to protect him from dangers posed by others. And, indeed, Camp's counsel represented to us at oral argument that Anthony was shot and killed two blocks from Camp's home. Having this in mind, we take up two questions: first, whether, by virtue of it being appointed Anthony's guardian, the DCFS (and thus Gregory) acquired any duty to protect Anthony that it otherwise would not have under DeShaney; and second, whether that duty extends to dangers beyond the household in which the DCFS and Gregory placed Anthony. We understand Gregory to answer "no" to both inquiries. Our analysis begins with review of DeShaney.

A. DeShaney

In DeShaney, the Court held that due process did not require the state to protect a child from the abuse he suffered at the hands of his father. Joshua DeShaney had repeatedly been taken to the local emergency room with injuries that physicians suspected were due to physical abuse. At one point Joshua was temporarily placed in the custody of the hospital while a "Child Protection Team" evaluated his situation; however, the Team determined there was insufficient evidence that he was being abused to retain custody. Joshua was returned to his father's custody and, despite subsequent hospital admissions for injuries indicative of abuse, local officials failed to intervene. Ultimately, his father beat Joshua so severely that he was expected to spend the remainder of his life in an institution for the profoundly retarded.

Despite the fact that local officials had suspected ongoing abuse, the Court rejected the contention that they had deprived Joshua of his liberty in violation of due process by taking no action:

> [N]othing in the language of the Due Process Clause itself requires the

> State to protect the life, liberty, and property of its citizens against invasion by private actors. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security. It forbids the State itself to deprive individuals of life, liberty, or property without "due process of law," but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means. Nor does history support such an expansive reading of the constitutional text....Its purpose was to protect the people from the State, not to ensure that the State protected them from each other. The Framers were content to leave the extent of governmental obligation in the latter area to the democratic political processes.

489 U.S. at 195-96, 109 S. Ct. at 1003.

The Court acknowledged that "in certain limited circumstances the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals." 489 U.S. at 198, 109 S. Ct.at 1004. Thus, when someone is incarcerated, the Eighth Amendment (via the Fourteenth) requires the State to provide him with adequate medical care. Estelle v. Gamble, 429 U.S. 97, 97 S. Ct. 285 (1976). Similarly, substantive due process compels the State to take reasonable steps to ensure the safety of individuals involuntarily committed to its mental facilities. Youngberg v. Romeo, 457 U.S. 307, 102 S. Ct. 2452 (1982).

But these cases afford petitioners no help. Taken together, they stand only for the proposition that when the State takes a person into its custody and hold him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs -- e.g., food, clothing, shelter, medical care, and reasonable safety -- it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause. The affirmative duty to protect arises not from the State-'s knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf. In the substantive due process analysis, it is the State's affirmative act of restraining the individual's freedom to act on his own behalf -- through incarcerations, institutionalization, or other similar restraint of personal liberty -- which is the "deprivation of liberty" triggering the protections of the Due Process Clause, not its failure to act to protect his liberty interests against harms inflicted by other means.

The Estelle-Youngberg analysis simply has no applicability in the pres-

> ent case. Petitioners concede that the harms Joshua suffered occurred not while he was in the State's custody, but while he was in the custody of his natural father, who was in no sense a state actor. While the State may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation, not did it do anything to render him any more vulnerable to them. That the State took temporary custody of Joshua does not alter the analysis, for when it returned him to his father's custody, it placed him in no worse position than that in which he would have been had it not acted at all; the State does not become the permanent guarantor of an individuals's safety by having once offered him shelter. Under these circumstances, the State had no constitutional duty to protect Joshua.

489 U.S. at 199-201, 109 S. Ct. at 1005-06 (footnotes and citations omitted).

B. Gregory's Duty to Protect Anthony Generally

In essence, Gregory argues that this case is on all fours with DeShaney, and that he bore no duty to protect Anthony from a danger that neither he nor the State played any role in creating. Likewise, although it was Gregory who made the decision to return Anthony to the Camp household after a court had made the DCFS his guardian, Gregory reasons that in doing so he placed Anthony in no worse position than if he had taken no action whatsoever.

We believe the fact that the DCFS had been made Anthony's guardian represents a key point of distinction from DeShaney, however. Camp had sought to surrender her own guardianship responsibilities because she believed she could not provide him adequate care and supervision. With the agreement of both Camp and the state, the complaint tells us, the court made the DCFS Anthony's guardian. At that juncture, whether the DCFS had a duty to intervene on Anthony's behalf was moot; it had already assumed a role that made it constitutionally liable (at least to some extent) for Anthony's well-being.

That the DCFS had a cognizable duty to protect Anthony as his guardian is reflected in a series of cases holding government officials liable for placing minors in foster homes where they suffered abuse or neglect. Prominent among these is our opinion in K.H. through Murphy v. Morgan, 914 F.2d 846 (7th Cir. 1990), which postdates DeShaney. In that case, an abused child who had been removed from the custody of her parents was then shuffled among a series of foster homes in which she continued to suffer abuse and was deprived of the special care she required in view of her history. The child sued DCFS officials, contending that they had deprived her of due process by placing her in foster homes that they knew to be either abusive or unable to care for her properly. We agreed that the plaintiff might have a viable claim in this circumstance. We noted at the outset that the Due Process Clause quite clearly prohibits a public officer from intentionally harming an individual physically without justification, citing, inter alia, Youngberg v. Romeo, 914 F.2d at 848. "The extension [of this principle] to the case in which the plaintiff's mental health is seriously impaired by deliberate and unjustified action is," we observed, "straight-forward." Id. We proceeded to distinguish DeShaney: This is not a "positive liberties" case, like DeShaney, where the question was whether the Constitution entitles a child to governmental protection against physical abuse by his parents or other private persons not acting under the direction of the state....Here, in contrast, the state removed a child from the custody of her parents; having done so, it could no more place her in a position of danger, deliberately and without justification, without thereby violating her rights under the due process clause of the Fourteenth Amendment than it could deliberately and without justification place a criminal defendant in a jail or prison in which his health or safety would be endangered, without violating his rights either under the cruel and unusual punishments clause of the Eighth Amendment (held applicable to the states through the Fourteenth Amendment) if he was a convicted prisoner, or the due process clause if he was awaiting trial. In either case the state would be a doer of harm rather than merely an inept rescuer, just as the Roman state was a doer of harm when it threw Christians to the lions.

The Roman analogy is sound even if one concedes, as one must in the light of DeShaney, that the State of Illinois has no constitutional obligation to protect children from physical or sexual abuse by their parents. The state could have left K.H. to the tender mercies of her parents without thereby violating her rights under the Constitution. But having removed her from their custody the state assumed at least a

> limited responsibility for her safety...The Illinois Department of Children and Family Services could not have subjected K.H. to sexual abuse and then defended on the ground that by doing this it did not make her any worse off than she would have been had she been left with her parents....Once the state assumes custody of a person, it owes him a rudimentary duty of safekeeping no matter how perilous his circumstances were when he was free. The distinction follows the lines of tort law. There is no duty to rescue a bystander in distress, but having rescued him from certain death you are not privileged to kill him. This is not to say that you assume responsibility for his future welfare. You do not. Our point is only that the absence of a duty to rescue does not entitle the rescuer to harm the person whom he has rescued.

914 F.2d at 848-49 (citations omitted). Consistent with our analysis in K.H., cases from our sister circuits also recognize that public officials may be held liable for damages when they place a child in a foster home knowing or having reason to know that the child is likely to suffer harm there. Doe v. New York City Dep't of Social Servs., 649 F.2d 134 (2d Cir. 1981), cert. denied sub nom. Catholic Home Bureau v. Doe, 464 U.S. 864, 104 S.Ct. 195 (1983); Taylor by & through Walker v. Ledbetter, 818 F.2d 791 (11th Cir. 1987) (en banc), cert. denied, 489 U.S. 1065, 109 S. Ct. 1337 (1989); Yvonne L. by & through Lewis v. New Mexico Dep't of Human Servs., 959 F.2d 883, 892 (10th Cir. 1992); Norfleet by & through Norfleet v. Arkansas Dep't of Human Servs., 989 F.2d 289, 292-93 (8th Cir. 1993).

Indeed, the Supreme Court in DeShaney was itself careful to acknowledge and distinguish this line of authority. Although the Court expressed no view on the validity of these cases, it did note that the state's placement of a child in a foster home presented a question distinct from the state's obligation to intervene in the first instance. 489 U.S. at 201 n.9, 109 S. Ct. at 1006 n.9. Thus, as our opinion in K.H. reflects, DeShaney does not preclude liability when the state, as guardian of a child, places that child in an environment where harm results. See also DeShaney v. Winnebago County Dep't of Social Servs., 812 F.2d 298, 303 (7th Cir. 1987), aff'd, 489 U.S. 189, 109 S. Ct. 998 (1989).

To be sure, there are differences between this case and K.H. First among them is that Gregory is not alleged to have placed Anthony in an abusive home, at least not one we would normally think of as abusive. The complaint does not suggest that anyone in the Camp household was prone to strike Anthony, or to molest him, or to deprive him of food or clothing, or to denigrate him emotionally. The focus of K.H. was confined to this realm: "The only right in question in this case is the right of a child in state custody not to be handed over by state officers to a foster parent or other custodian, private or public, whom the state knows or suspects to be a child abuser." 914 F.2d at 852 (emphasis in original). Camp moves a step beyond this narrow right; her theory is that Gregory knowingly returned Anthony to a household that could not supervise and guide Anthony to the degree he required. This is a theory that K.H. neither addressed nor endorsed. Yet, it is not one we are prepared to reject out of hand. It is no great leap to suggest that the adult custodian of a child is obligated not only to feed and clothe the child and refrain from hurting him either physically or mentally, but to monitor his activities and to step in to prevent him from harming himself. The examples spring easily to mind when the child in question is particularly young -- keeping him away from electrical sockets and out of medicine cabinets, for example. As a child grows older we presume, barring some disability, the he is increasingly able to exercise his own judgment and keep himself out of harm's way. Yet, the custodial duty of supervision continues -- ensuring that the child returns home at a safe hour, that he attends school, and that he does not abuse drugs or alcohol. Thus, we do not suppose that anyone would think it appropriate for the DCFS to knowingly place a child with adults who provided food, shelter, and clothing, but who routinely left the child unattended and unsupervised -- be that child six years old or sixteen. See, e.g., In re B.T., 561 N.E.2d 1269 (Ill. App. 1990); 720 ILCS 5/12-21.5 (Smith-Hurd 1995 Supp.); 720 ILCS 640/1 (Smith-Hurd 1993). Indeed, DCFS regulations explicitly incorporate the responsibility of supervision in the criteria for foster parents. Ill. Admin. Code tit. 89, § 335.3-18(c), (d) (1995). Thus, we believe a child placed in the guardianship of the state has a due process right not to be placed by the state with a custodian whom the state knows will fail to exercise the requisite degree of supervision over the child. This is precisely the right that Camp alleges Gregory denied to Anthony; and it is the denial of that right, she further alleges, which resulted in Anthony's death.

In this case, of course, Gregory did not place Anthony with a stranger, but returned him to his aunt. That fact is important for two reasons. First, our cases acknowledge a difference between the state placing a child with a relative and placing him with a foster home. Second, DeShaney emphasized that although the state may have been aware of the danger that Joshua faced in his family's home, it had done nothing to create those dangers nor had it done anything rendering Joshua more vulnerable to them. Neither of these points necessarily bars Camp's claim, however, in view of the facts alleged.

In K.H., we acknowledged that "there is indeed a difference between placing a child with a member of her family and placing the child with a foster parent" (914 F.2d at 852), explaining that "[s]tate employees who withhold a child from her family run the risk of being sued by the family for infringing their liberty of familial association, and we do not want to place child welfare workers on a razor's edge -- damned if they return the child to its family and damned if they retain custody of the child or place him in a foster home or institution" (id. at 853) (citation omitted). That concern is not implicated here, however. Camp, after all, had affirmatively sought to terminate her guardianship over Anthony because she believed herself unable to provide the degree of care and supervision he required, and the state court apparently agreed. Thus, Gregory faced no peril in removing Anthony from the Camp household -- that is exactly what Camp wanted, and it was a desire she unequivocally reiterated when she wrote to Gregory just prior to Anthony's death. Moreover, the DCFS did not relinquish its guardianship over Anthony when Gregory decided to return Anthony to the Camp household rather than seek an alternate placement immediately. Thus, to the extent Gregory and the DCFS bore a duty for Anthony's safety when it was appointed guardian that duty did not terminate when Anthony was placed again with Camp.

Moreover, given the circumstances leading to the appointment of the DCFS as Anthony's guardian, we believe that the alleged danger he encountered in the Camp household due to Camp's inability to care for him adequately is one that may be attributed to Gregory. Again, we must distinguish this case from DeShaney. Had the state simply turned a deaf ear to Camp's pleas in the first instance, it would have no constitutional liability under DeShaney. But once the DCFS became Anthony's guardian, Gregory shouldered a responsibility to provide Anthony with a safe environment. When he returned Anthony to an environment he allegedly knew to be inadequate, Gregory might be said to have resurrected the danger that had motivated Camp to surrender guardianship in the first place.

Gregory maintains nonetheless that he could not have violated Anthony's liberty interest because he did nothing to interfere with Anthony's ability to avoid or extricate himself from dangerous situations or with Camp's ability to help him do so. This argument derives from a series of cases recognizing that state officials who might not otherwise have a cognizable duty to rescue a person from harm expose themselves to liability when they prevent others from coming to that individual's aid. See Ross v. United States, 910 F.2d 1422, 1432-33 (7th Cir. 1990) (collecting cases); see also DeShaney, 489 U.S. at 200, 109 S. Ct. at 1005; Pinder v. Johnson, 54 F.3d 1169, 1174-75 (4th Cir. 1995) (en banc); Johnson v. Dallas Indep. School Dist., 38 F.3d 198, 201-02 (5th Cir. 1994), cert. denied, 115 S. Ct. 1361 (1995). Arguing the converse of that principle here, Gregory suggests that because he did nothing to confine Anthony in a physically harmful situation, and because nothing he did prevented Camp from coming to Anthony's aid and extricating him from danger, he in no way deprived Anthony of liberty. This argument is misplaced. Even if we assume that Gregory's conduct in no way interfered with the ability of any private citizens (including Camp and Anthony himself) to "rescue" Anthony from the dangers that culminated in his death, that assumption does not detract from the affirmative duty to intervene on Anthony's behalf with sprang from the DCFS being made his guardian.

This is not a case in which a public official is charged with hampering private efforts to aid a victim, but rather one based on the official's failure, as his appointed guardian, to come to that victim's aid himself. At the same time, the notion that Gregory did nothing which interfered with Camp's efforts to protect Anthony or that precluded Anthony from helping himself is not necessarily accurate. As far as Anthony is concerned, it is not at all implausible to assume that as a minor, and particularly one with special educational and custodial needs, he may not have possessed the degree of maturity necessary to extricate himself from potentially harmful situations. And, indeed, that is the crux of Camp's claim -- that Anthony required a heightened level of supervision, guidance, and instruction that she could not provide. Furthermore, if what Anthony really needed was a different caretaker, then Camp's own attempts to secure him one presumably were halted once the court appointed the DCFS Anthony's guardian. At that juncture, we assume, Camp was not free simply to relocate Anthony to a different household; nor, needless to say, was Anthony himself able to do so as an unemancipated minor. That ability had been officially turned over to Gregory; and at a minimum, we may suppose that Camp believed he would shoulder the burden of either finding a different placement for Anthony or supplementing Camp's efforts by providing the educational and counseling references she sought.

Camp did relinquish her guardianship over Anthony voluntarily, whereas a number of foster care cases have stressed the involuntary character of the change in guardianship as key to recognizing a due process claim. See Taylor, 818 F.2d at 797; Milburn v. Anne Arundel County Dep't of Social Servs., 871 F.2d 474, 476 (4th Cir.), cert. denied, 493 U.S. 850, 110 S. Ct. 148 (1989); see also Walton v. Alexander, 44 F.3d 1297, 1303-04 (5th Cir. 1995) (en banc). But in this case Camp sought to surrender guardianship allegedly because she was unable to care for Anthony adequately, the court presumably agreed when it granted her request, and the state did assume guardianship. We are unwilling to decree that simply because Camp, as opposed to the state, initiated the transfer of guardianship, under no set of facts could a state official be liable for a subsequent deprivation of due process. See Walton, 44 F.3d at 1309 (special concurrence) ("The question is not so much how the individual got into state custody, but to what extent the state exercises dominion and control over that individual.") (emphasis in original).

We also find it significant that Gregory allegedly misrepresented to the Illinois court that all was well with Anthony's continued residence in the Camp household. If, in fact, he did so, he may have effectively prevented any independent assessment by that court of whether the concerns that had led to the DCFS' guardianship were being addressed. Camp's entreaties to Gregory suggest that nothing had changed; but Gregory allegedly concealed that fact from the court. Thus, in a very real sense, it could be said (if the facts bear out the complaint) that Gregory did frustrate the efforts of other private persons and public officials to improve Anthony's situation.

C. Duty to Protect Anthony from Violence Outside of the Home

Whether Gregory's duty extended to dangers outside of the household to which he had returned Anthony is a more novel and difficult question. Gregory argues that this aspect of Camp's claim makes the case even more compelling for him than DeShaney. In one sense he is no doubt correct. Government officials can and routinely do make assessments of the adults with whom children under the state's guardianship are placed. Thus, as we recognized in K.H., if a DCFS caseworker places a child in a foster home where he knows the child will likely suffer abuse, he can be held liable. But to place on the caseworker a duty to evaluate and protect a child from dangers outside of the household is a great step beyond that. Given the widespread escalation of violence we have witnessed over the years, many a child may be in danger of injury at the hands of strangers when he is outside of his home, and public officials cannot be deemed constitutionally obligated to shield a child from all such dangers beyond the reasonable control of his parent or foster parent any more than the parents themselves can be.

Even so, a parent does not relinquish all responsibility once a child leaves the house. No one would think it reasonable, for example, for a parent to knowingly permit a toddler to wander the streets at will, confronting a gamut of risks from inattentive motorists to Mr. or Ms. Stranger Danger. We expect, instead, that the parent will have the child in hand, protecting him from danger that the child is otherwise unequipped to avoid. As the child matures, the degree to which his parent is expected to supervise his activities lessens, but it does not cease altogether. We still expect parents to see to it that their children attend school, obey statutory curfews, and stay out of trouble. Parents are not the insurers of their children's conduct, but when they fail to exercise a reasonable degree of supervision, they can be held liable for their omissions. See, e.g., Restatement (Second) of Torts § 316 (1965); 720 ILCS 640/1.

Commensurate with the parental obligation to supervise a child's activities outside the home is a duty on the part of the state not to place one of its charges with an adult that it knows will not or cannot exercise that responsibility. The DCFS regulations governing placement with relative caretakers recognize that responsibility, specifying as a pre-condition to approval that the DCFS staff must find that "supervision of the related child(ren) can be assured at all times including times when the related caregiver is employed or otherwise engaged in activity outside of the home." Ill. Admin. Code tit. 89 § 335.-202(c)(7) (1995). Thus, we believe that when a DCFS caseworker places a child in a home knowing that his caretaker cannot provide reasonable supervision, and the failure to provide that degree of supervision and care results in injury to the child outside of the home, it might be appropriate, depending upon the facts culminating in the injury, for the caseworker to be held liable for a deprivation of liberty.

Liability must, nonetheless, be confined to what we believe will be a very narrow range of cases. Without attempting to identify all of the factors that might limit this category, we mention a few that come readily to mind. First, before a DCFS worker or other state official can be held liable for a placement decision, he must, as we indicated in K.H., have failed to exercise bona fide professional judgment. 914 F.2d at 854. Second, a caretaker can be expected only to provide a reasonable degree of supervision to a minor in her care. Extraordinary efforts to protect a child from dangers outside of the home might save the child from injury when reasonable measures would not, but only when the caretaker's efforts fall short of the reasonable could the official responsible for placing the child with that caretaker be held liable for the resulting injury. Moreover, the injury suffered must, we believe, be one reasonably foreseeable to the official. A caseworker who is aware that the caretaker he selects will not supervise the child appropriately may not be able to foresee the particular injury that will result from the lack of supervision. If that is the case, then it would be inappropriate to impose liability on the caseworker. But here, Camp alleges that she had placed Gregory on notice of the particular problems resulting from her inability to supervise and guide Anthony to the degree necessary. Finally, we stress that there must be a sufficient causal link between the failure to provide reasonable supervision and the injury. If Anthony were killed at random in a drive-by shooting while he was out for a walk after curfew, for example, there would be no basis to impose liability on Gregory even if he knew Camp was unable to supervise him reasonably. Likewise, if Anthony was so bent on engaging in dangerous activity that even reasonable efforts to restrain him from doing so would not have prevailed, it would be untenable to hold Gregory liable for his decision to leave him with Camp.

Because the complaint does not detail the particular circumstances of Anthony's death, we cannot say one way or another whether this case would fit the criteria we have articulated. In light of our conclusion below that Gregory is entitled to qualified immunity, it does not matter; no factual development of the case is required. It may be, as Gregory has argued so vigorously, that Anthony was killed as the result of his own knowing decision to involve himself in gang activity. The complaint's reference to Anthony's tendency to place himself in dangerous situations certainly is consistent with that scenario; and if that is what occurred, then Gregory's alleged misdeeds likely would not support a finding of liability. On the other hand, if Anthony's death was the proximate result of Camp's inability to supervise him to a reasonable degree, if (as alleged) Gregory knew Camp could not supervise Anthony adequately, and if the circumstances of Anthony's death were reasonably foreseeable to Gregory, then barring a finding of qualified immunity we believe that Gregory might be held liable for his decision to place Anthony with Camp.

For all of these reasons, we believe that the allegations of Camp's complaint did state a viable due process claim against Gregory. We wish to emphasize, however, the limited nature of our holding. The details provided by the amended complaint are few; and further factual development in this case might readily place this case outside the quite narrow category of circumstances in which a state official might be liable for a deprivation of due process. If accurate, the suggestion that Anthony was shot by a private citizen, perhaps in yet another tragic instance of gang violence, might well doom the action if qualified immunity did not. But this assertion, on which the state relies so heavily in defending Gregory, is not supported by the record. Our review is restricted to the allegations before us (see Reed v. Gardner, 986 F.2d 1122, 1124 (7th Cir.), cert. denied, 114 S. Ct. 389 (1993)) and these do not reveal just how Anthony died. What is alleged is that the state had, by court order, assumed guardianship over Anthony, that Gregory left Anthony with Camp, and that despite Camp's letter informing him that Anthony was in danger and required a different placement, Gregory falsely represented to the Illinois court that all was "fine." Because we can hypothesize facts consistent with these allegations which, if proven, would make out a valid due process claim against Gregory (see Graehling v. Village of Lombard, supra, 58 F.3d at 297), we cannot say that the amended complaint failed to state a claim upon which relief could be granted.

D. Qualified Immunity

A public official who has deprived someone of his constitutional right may nonetheless enjoy immunity from an award of damages if his actions were "objectively reasonable, meaning that [if] '[his] conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known,'" he is immune from an action for civil damages. Supreme Video, Inc. v. Schauz, 15 F.3d 1435, 1438-39 (7th Cir. 1994) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982)). Thus:

> When the law is settled on a particular point, public employees are expected to conform their conduct accordingly, and they may be held liable when they do not. On the other hand, they "need not predict [the law's] evolution, need not know that in the fight between broad and narrow readings of a precedent the broad reading will become ascendant." Greenberg v. Kmetko, 922 F.2d 382, 385 (7th Cir. 1991).

Smith v. Fruin, 28 F.3d 646, 650 (7th Cir. 1994), cert. denied, 115 S. Ct. 735 (1995). We must therefore decide whether a reasonable public official in Gregory's position would have realized in 1991 that he could not knowingly place a child over whom the state has been made guardian with a caretaker who cannot provide a reasonable degree of supervision and intervention in the child's activities. We believe he would not.

Certainly it was clear by 1991 that a child had a right not to be placed with an abusive caretaker. K.H., a 1990 decision, settled that issue in this circuit. However, Camp has cited no decision to us recognizing a constitutional right to adequate supervision and guidance. There are hints in the cases that caseworkers must not place children with caretakers who will abuse or neglect them. E.g., K.H., 914 F. 2d at 853. Neglect certainly could be construed to include not only the failure to provide a child with the necessities, but the degree of supervision, instruction, and involvement necessary to steer the child clear of dangerous activities. Yet, no case cited to us does so. Thus, at best a public official would have had to predict that cases such as K.H. would be construed expansively in order to anticipate our holding today. Certainly an official could be charged with knowledge that it was impermissible to misrepresent facts to a court, as Camp alleges Gregory did, but he could not have predicted civil liability under the due process clause for the placement decision itself. This is a classic instance in which a public official is entitled to qualified immunity. Greenberg, 922 F.2d at 385.

IV. PROCEDURAL DUE PROCESS CLAIM

Camp suggests on appeal that she may have a claim for a violation of Anthony's procedural due process rights, in addition to his right to substantive due process.

It may well be, as Gregory argues, that the circumstances of this case do not fit comfortably within the procedural due process framework, as the partial dissent in Taylor suggests. 818 F.2d at 822. The focus of Camp's complaint is on the deprivation of Anthony's liberty, but procedural due process is concerned not with the deprivation per se, but with the mistaken or unjustified deprivation of a constitutional right. Carey v. Piphus, 435 U.S. 247, 259, 98 S. Ct. 1042, 1050 (1978). Better procedures at DCFS might have reduced the chance that Anthony would be placed in a dangerous environment, but we certainly do not understand Camp to argue that Gregory would ever have been justified in knowingly placing Anthony in such an environment and thereby depriving him of his liberty. Yet, the procedural due process inquiry assumes that the individual can be deprived of the particular right in question and asks only what procedures must be followed in doing so. E.g., Fittshur v. Village of Menomonee Falls, 31 F.3d 1401, 1405 (7th Cir. 1994); see Taylor, 818 F.2d at 822 (dissent); cf. Mid-American Waste Sys., Inc. v. City of Gary, Indiana, 49 F.3d 286, 290-91 (7th Cir. 1995). In any event, neither Camp's complaint nor her briefs have adequately identified any respect in which the procedures the DCFS employed were unfair. Indeed, the record suggests that Camp never attempted to articulate a procedural due process theory below: neither the original nor the amended complaint explicitly mentions procedural due process, and in opposing dismissal, Camp never invoked procedural due process. See R. 17 at 8, R. 25 at 3-4, 6. Accordingly, we deem any theory gounded in procedural due process to have been waived. Harris Trust & Sav. Bank v. Provident Life

& Accident Ins. Co., 57 F.3d 608, 614 (7th Cir. 1995).

V. CONCLUSION

Although we believe that Camp's complaint alleged facts sufficient to state a claim for the deprivation of Anthony's liberty in violation of his Fourteenth Amendment right to substantive due process, we also conclude that Gregory is entitled to qualified immunity. Because Camp did not argue below that her complaint stated a separate procedural due process claim, we deem any such argument waived and need not consider its merits.

AFFIRMED

APPENDIX B

UNITED STATES OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

Decided October 23, 1995

Before

Hon. John L. Coffey, Circuit Judge
Hon. Ilana D. Rovner, Circuit Judge
Hon. James L. Foreman, District Judge*

No. 93-3314

ELNORA CAMP, as Adminis-) Appeal from the
strator of the Estate) U.S. District
of ANTHONY YOUNG,) Court for the
Plaintiff-Appellant) No. Dist. of IL
) Eastern Div.
v.) No. 92 C 8424
)
GEORGE GREGORY,) James B. Moran
Defendant-Appelee) Judge

ORDER

On consideration of the petition for rehearing filed by plaintiff-appellant filed on October 10, 1995, all of the judges on the original panel having voted to deny the same,

IT IS HEREBY ORDERED that the aforesaid petition for hearing be, and the same is hereby, DENIED.

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*The Honorable James L. Foreman, of the Southern District of Illinois, sitting by designation.

APPENDIX C

ILLINOIS

REVISED STATUTES

1991

STATE BAR ASSOCIATION EDITION

Containing the
General and Permanent Laws of Illinois
Through P.A. 87-847 of the 87th General Assembly
Convened January 9, 1991
Adjourned July 19, 1991
Reconvened October 22, 1991
Adjourned sine die November 8, 1991

Volume 1

Chapters 1 to 31

**General Provisions
to
Coroners**

Compiled and Edited
Under
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St. Paul, Minn.
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CHILDREN AND FAMILY SERVICES ACT

AN ACT creating the Department of Children and Family Services, codifying its powers and duties, and repealing certain Acts and Sections herein named. Laws 1963, p. 1061, approved June 4, 1963, eff. Jan. 1, 1964.

Transfer of rights, powers and duties relating to exercise of executive and administrative supervision of certain institutions from the Department of Children and Family Services to the Board of Vocational Rehabilitaiton, see Executive Order No. 1 (1979) preceding ¶ 3430 of this chapter.

5001. Purpose

1. The purpose of this Act is to create a Department of Children and Family Services to provide social services to children and their families, to operate children's institutions, and to provide certain other rehabilitative and residential services as enumerated in this Act.

It is the intent of this Act that the child welfare services herein provided do not release the parent or guardian from responsibility to provide for the financial support of their children.

This primary and continuing responsibility applies whether the family unit of parents and children remain intact and reside in a common household or whether the unit has been temporarily broken by reason of child abuse, neglect, dependency or other reasons necessitating state care and training. It is the purpose of this Act to provide for determination for the appropri-

ate level of support, from parents given their financial circumstances.
Amended by P.A. 83-1037, § 1, eff. July 1, 1984.

5001.1. Short title

§ 1.1. This Act shall be known and may be cited as the Children and Family Services Act.
Added by P.A. 86-820, Art. III, § 3-8, eff. Sept. 7, 1989.

5002. Additional powers and duties

§ 2. In addition to the powers and duties otherwise provied by law, the Department shall have the powers enumerated in Sections 3 through 34-9[1] inclusive.
Amended by P.A. 86-820, Art. III, § 3-8, eff. Sept. 7, 1989. P.A. 86-889, § 1, eff. Sept. 11, 1989; P.A. 86-1028, Art. II. § 2-13, eff. Feb. 5, 1990.

[1] Paragraphs 5003 through 5034.9 of this chapter.

P.A. 86-1028, Art. II, resolved multiple actions in the 86th General Assembly and made certain technical corrections in P.A. 86-1 through P.A. 86-1009.

5003. Subdivisions -- Establishment -- Responsibilities

§ 3. To establish such subdivisions of the Department as shall be desirable and assign to the various subdivisions the responsibilities and duties placed upon the Department by the Laws of the State of Illinois.

5004. Rules-Administrative procedure

§ 4. To make all rules necessary for the execution of its powers. The superintendent of each institution and division of the Department shall make such special

rules as may be needed, subject to the approval of the Directior. The provisions of "The Illinois Administrative Procedure Act", approved September 22, 1975,[1] are hereby expressly adopted and shall apply to all administrative rules and procedures of the Department of Children and Family Services under this Act, except that Section 5 of The Illinois Administrative Procedure Act[2] relating to procedures for rule-making does not apply to the adoption of any rule required by federal law in connection with which the Department is precluded by law from exercising any discretion.
Amended by P.A. 79-1345, § 1, eff. July 1, 1977.

[1] Chapter 127, ¶ 1001 et seq.
[2] Chapter 127, ¶ 1005.

5004a. Child abuse prevention shelters-Service programs for abused and neglected children

§ 4a. (a) To administer child abuse prevention shelters and service programs for abused and neglected children, or provide for their administration by not-for-profit corporations, community-based organizations or units of local government.

The Department is hereby designated the single State agency for planning and coordination of child abuse and neglect prevention programs and services. On or before the first Friday in April of each year, the Department shall submit to the Governor and the General Assembly a State comprehensive child abuse and neglect prevention plan. The plan shall: identify priorities, goals and objectives; identify the resources necessary to implement the plan, including estimates of resources needed to investigate or otherwise process reports of suspected child abuse or neglect and to provide necessary follow-up services for child protection, family preservation and family reunification in "indicated" cases as determined under the Abused and Neglected Child Reporting Act;[1] make proposals for the most effective use of existing resources to implement the plan, including recommendations for the optimum use of private, local public, State and federal resources; and propose strategies for the development of additional resources to meet the goal of reducing the incidence of child abuse and neglect and reducing the number of reports of suspected child abuse and neglect made to the Department.

(b) The administration of child abuse prevention, shelters-and service programs under subsection (a) shall be funded in part by appropriations made from the Child Abuse Prevention Fund, which is hereby created in the State Treasury, and in part by appropriations from the General Revenue Fund. All interest earned on monies in the Child Abuse Prevention Fund shall remain in such fund. The Department and the State Treasurer may accept funds as provided by Sections 507 and 508 of the Illinois Income Tax Act[2] and unsolicited private donations for deposit into the Child Abuse Prevention Fund. Annual requests for appropriations for the purpose of providing child abuse and neglect prevention programs and services under this Section shall be made in separate and distinct line-items. In setting priorities for the direction and scope of such programs, the Director shall be advised by the State-wide Citizen's Committee on Child Abuse and Neglect.

(c) Where the Department contracts with outside agencies to operate the shelters or programs, such outside agencies may receive funding from the Department, except that the shelters must certify a 20% financial match for operating expenses of their programs. In selecting the outside agencies to administer child shelters and service programs, and in allocating funds for such agencies, the Department shall give priority to new and existing shelters or programs offering the broadest range of services to the community served.

(d) The Department shall have the power to make grants of monies to fund comprehensive community-based services to reduce the incidence of family dysfunction typified by child abuse and neglect; to diminish those factors found to increase family dysfunction; and to measure the effectiveness and costs of such services.

(e) For implementing such intergovernmental cooperation and involvement, units of local government and public and private agencies may apply for and receive federal or State funds from the Department under this Act or seek and receive gifts from local philanthropic or other private local sources in order to augment any State funds appropriated for the purposes of this Act.

(f) For the purposes of this Section:

(1) The terms "abused child" and "neglected child" have meanings ascribed to them in Section 3 of the Abused and Neglected Child Reporting Act.[3]

(2) "Shelter" has the meaning ascribed to it in Section 1-3 of the Juvenile Court Act of 1987.[4]

Amended by P.A. 85-1209, Art. III, § 3-12, eff. Aug. 30, 1988.

[1] Paragraph 2051 et seq. of this chapter.
[2] Chapter 120, ¶¶ 5-507, 5-508.
[3] Paragraph 2053 of this chapter.
[4] Chapter 37, ¶ 801-3.

5005. Direct child welfare services

Text of paragraph as amended by P.A. 87-14, Art. 2, § 2-4; P.A. 87-435, Art. 2, § 2-4; P.A. 87-617, § 1; P.A. 87-629, § 1.

§ 5. To provide direct child welfare services when not available through other public or private child care or program facilities.

(a) For purposes of this Section:

(1) "Children" means persons found within the State who are under the age of 18 years. The term also includes persons under age 19 who:

(A) were commited to the Department pursuant to the Juvenile Court Act[1] or the Juvenile Court Act of 1987, as amended,[2] prior to the age of 18 and who continue under the jurisdiction of the court; or

(B) were accepted for care, service and training by the Department prior to the age of 18 and whose best interest in the discretion of the Department would be served by continuing that care, service and training because of severe emotional disturbances, physical disability, social adjustment or any combination thereof, or because of the need to complete an educational or vocational training program.

(2) "Homeless youth" means persons found within the State who are under the age of 19, are not in a safe and stable living situation and cannot be reunited with their families.

(3) "Child welfare services" means public social services which are di-

rected toward the accomplishment of the following purposes:

(A) protecting and promoting the welfare of children, including homeless, dependent or neglected children;

(B) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation or delinquency of children;

(C) preventing the necessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing the breakup of the family where the prevention of child removal is desirable and possible.

(D) restoring to their families children who have been removed, by the provision of services to the child and the families;

(E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate;

(F) assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be returned home or cannot be placed for adoption;

(G) providing supportive services and living maintenance which contribute to the physical, emotional and social well-being of children who are pregnant and unmarried;

(H) providing shelter and independent living services for homeless youth; and

(I) placing and maintaining children in facilities that provide separate living quarters for children under the age of 18 and for children 18 years of age and older, unless a child 18 years of age is in the last year of high school education or vocational training, in an approved individual or group treatment program, or in a licensed shelter facility. The Department is not required to place or maintain children:

(i) who are in a foster home; or

(ii) who are developmentally disabled, as defined in the Mental Health and Developmental Disabilities Code;[3] or

(iii) who are female children who are pregnant, pregnant and parenting or parenting; or

(iv) who are siblings.

in facilities that provide separate living quarters for children 18 years of age and older and for children under 18 years of age.

(b) Nothing in this Section shall be construed to authorize the expenditure of public funds for the purpose of performing abortions.

(c) The Department shall establish and maintain tax-supported child welfare services and extend and seek to improve voluntary services throughout the State, to the end that services and care shall be available on an equal basis throughout the State to children requiring such services.

(d) The Director may authorize advance disbursements for any new program initiative to any agency contracting with the Department. As a prerequisite for an advance disbursement, the contractor must post a surety bond in the amount of the advance disbursement and have a purchase of service contract approved by the Department. The Department may pay up to 2 months operational expenses in advance. The amount of the advance disbursement shall be prorated over the life of the contract or the remaining months of the fiscal year, whichever is less, and the installment amount shall then be deducted from future bills. Advance disbursement authorizations for new initiatives shall not be made to any agency after that agency has operated during 2 consecutive fiscal years. The requirements of this Section concerning advance disbursements shall not apply with respect to the following: payments to local public agencies for child day care services as authorized by Section 5a of this Act;[4] and youth service programs receiving grant funds under Section 17a-4.[5]

(e) For the purpose of insuring effective state-wide planning, development, and utilization of resources for the day care of children, operated under various auspices, the Department is hereby designated to coordinate all day care activities for children of the State and shall:

(1) Develop on or before December 1, 1977, and update every year thereafter, a state comprehensive day-care plan for submission to the Governor which identifies high-priority areas and groups, relating them to available resources, and identifying the most effective approaches to the use of existing day care services. The State comprehensive day-care plan shall be made available to the General Assembly following the Governor's approval of the plan.

The plan shall include methods and procedures for the development of additional day care resources for children to meet the goal of reducing short-run and long-run dependency and to provide necessary enrichment and stimulation to the education of young children. Recommendation shall be made for State policy on optimum use of private and public, local, state and federal resources, including an estimate of the resources needed for the licensing and regulation of day care facilities.

A written report shall be submitted to the Governor and the General Assembly, annually, on February 15, and shall include an evaluation of developments over the preceding fiscal year, including cost-benefit analyses of various arrangements. Beginning on February 15, 1990 and every 2 years thereafter, the report shall also include the following:

(A) An assessment of the child care services, needs and available resources throughout the State and an assessment of the adequacy of existing child care services, including, but not limited to, services assisted under this Act and under any other program administered by other State agencies.

(B) A survey of day care facilities to determine the number of qualified caregivers, as defined by rule, attracted to vacant positions and any problems encountered by facilities in attracting and retaining capable caregivers.

(C) The average wages and salaries and fringe benefit packages paid to caregivers throughout the State, computed on a regional basis.

(D) The qualifications of new caregivers hired at licensed day care facilities during the previous 2 year period.

(E) Recommendations for increasing caregiver wages and salaries to insure quality care for children.

(F) Evaluation of the fee structure and income eligibility for child care subsidized by the State.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Research Unit, as required by Section 3.1 of the General Assembly Organization Act,[6] and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act.[7]

(2) Establish policies and procedures for developing and implementing interagency agreements with other agencies of the State providing child care services or reimbursement for such services.

(3) In cooperation with other State agencies, develop and implement a resource and referral system for the State of Illinois either within the Department or by contract with local or regional agencies. Funding for implementation of this system may be provided through Department appropriations or other inter-agency funding arrangements. The resource and referral system shall provide at least the following services:

(A) assembling and maintaining a

data base on the supply of child care services;

(B) providing information and referrals for parents;

(C) coordinating the development of new child care resources;

(D) providing technical assistance and training to child care service providers; and

(E) recording and analyzing the demand for child care services.

The Department shall complete implementation of this resource and referral system in all regions of the State by January 1, 1992.

(4) Conduct day care planning activities with the following priorities:

(A) development of voluntary day care resources wherever possible, with the provision for grants-in- aid only where demonstrated to be useful and necessary as incentives or supports;

(B) emphasis on service to children of recipients of public assistance where such service will allow training or employment of the parent toward achieving the goal of independence;

(C) maximum employment of recipients of public assistance in day care centers and day care homes, operated in conjunction with short-term work training programs;

(D) care of children from families in stress and crises whose members potentially may become, or are in danger of becoming, non-productive and dependent;

(E) expansion of family day care facilities wherever possible;

(F) location of centers in economically depressed neighborhoods, preferably in multi-service centers with cooperation of other agencies;

(G) use of existing facilities free of charge or for reasonable rental wherever possible in lieu of construction;

(H) development of strategies for assuring a more complete range of day care options, including provision of day care services in homes, in schools or in centers, which will enable a parent or parents to complete a course of education or obtain or maintain employment.

Emphasis shall be given to support services which will help to ensure such parents' graduation from high school and to services for participants in the Project Chance program of job training conducted by the Illinois Department of Public Aid.

(5) Actively stimulate the development of public and private resources at the local level. It shall also seek the fullest utilization of federal funds directly or indirectly available to the Department.

Where appropriate, existing non-governmental agencies or associations shall be involved in planning by the Department.

(f) The Department, pursuant to a contract with the Illinois Department of Public Aid, may provide child care services to former recipients of assistance under The Illinois Public Aid Code as authorized by Section 9-6.3 of that Code.[8]

(g) The Department shall establish rules and regulations concerning its operation of programs designed to meet the goals of child protection, family preservation, family reunification, adoption and youth development, including but not limited to:

(1) adoption;
(2) foster care;
(3) family counseling;
(4) protective services;
(5) service to unwed mothers;
(6) homemaker service;
(7) return of runaway children;
(8) independent living skills and shelter for homeless youth;
(9) placement under Section 5-7 of the Juvenile Court Act[9] or Section 2-27, 3-28, 4-25 or 5-29 of the Juvenile Court Act of 1987[10] in accordance with the federal Adoption Assistance and Child Welfare Act of 1980;[11] and
(10) interstate services.

Rules and regulations established by the Department shall include provisions for training Department staff and the staff of Department grantees, through contracts with other agencies or resources, in alcohol and drug abuse screening techniques to identify children and adults who should be referred to an alcohol and drug abuse treatment program for professional evaluation.

(h) If the Department finds that there is no appropriate program or facility within or available to the Department for a ward and that no licensed private facility has an adequate and appropriate program or none agrees to accept the ward, the Department shall create an appropriate individualized, program-oriented plan for such ward. The plan may be developed within the Department or through purchase of services by the Department to the extent that it is within its statutory authority to do.

(i) Service programs shall be available throughout the State and shall include but not be limited to the following services:

(1) case management;
(2) homemakers;
(3) counseling;
(4) parent education;
(5) day care; and
(6) emergency assistance and advocacy.

In addition, the following services may be made available to assess and meet the needs of children and families:

(1) comprehensive family-based services;
(2) assessments;
(3) respite care; and
(4) in-home health services.

The Department shall provide transportation for any of the services it makes available to children or families or for which it refers children or families.

(j) The Department may provide financial assistance, and shall establish rules and regulations concerning such assistance, to persons who adopt physically or mentally handicapped, older and other hard-to-place children who immediately prior to their adoption were legal wards of the Department. The Department may also provide financial assistance, and shall establish rules and regulations for such assistance, to persons appointed guardian of the person under Section 5-7 of the Juvenile Court Act or Section 2-27, 3-28, 4-25 or 5-29 of the Juvenile Court Act of 1987 for children who were wards of the Department for 12 months immediately prior to the appointment of the successor guardian and for whom the Department has set a goal of permanent family placement with a foster family.

The amount of assistance may vary, depending upon the needs of the child and the adoptive parents, but must be less than the monthly cost of care of the child in a foster home. Special purpose grants are allowed where the child requires special service but such costs may not exceed the amounts which similar services would cost the Department if it were to provide or secure them as guardian of the child.

(k) The Department shall accept for care and training any child who has been adjudicated neglected or abused, or dependent committed to it pursuant to the Juvenile Court Act or the Juvenile Court Act of 1987.

(l) The Department shall accept for family preservation services, and shall provide appropriate services to, any family whose child has been placed in substitute care, any persons who have adopted a child and require post-adoption services, or any persons whose child or children are at risk of being placed outside their home as documented by an "indicated" report of suspected child abuse or neglect determined pursuant to the Abused and Neglected Child Reporting Act.[12]

The Department shall notify the child and his family of the Department's responsibility to offer and provide family preservation services as identified in the service plan. The child and his family shall be eligible for services as soon as the report is determined to be "indicated". The Department may offer services to any child or family with respect to whom a report of suspected child abuse or neglect has been filed, prior to concluding its investigation under Section 7.12 of the Abused and Neglected Child Reporting Act.[13] However, the child's or family's willingness to accept services shall not be considered in the investigation. The Department may also provide services to any child or family who is the subject of any report of suspected child abuse or neglect or may refer such child or family to services available from other agencies in the community, even if the report is determined to be unfounded, if the conditions in the child's or family's home are reasonably likely to subject the child or family to future reports of suspected child abuse or neglect. Acceptance of such services shall be voluntary.

The Department may, at its discretion except for those children also adjudicated neglected or dependent, accept for care and training any child who has been adjudicated delinquent, addicted, as a truant minor in need of supervision or as a minor requiring authoritative intervention, under the Juvenile Court Act or the Juvenile Court Act of 1987, but no such child shall be committed to the Department by any court without the approval of the Department, except a minor less than 13 years of age committed to the Department under subsection (1)(a)(4) of Section 5-2 of the Juvenile Court Act[14] or Section 5-23 of the Juvenile Court Act of 1987.[15]

(m) The Department may assume temporary custody of any child if:

(1) it has received a written consent to such temporary custody signed by the

parents of the child or by the parent having custody of the child if the parents are not living together or by the guardian or custodian of the child if the child is not in the custody of either parent, or

(2) the child is found in the State and neither a parent, guardian nor custodian of the child can be located.

If the child is found in his or her residence without a parent, guardian, custodian or responsible caretaker, the Department may, instead of removing the child and assuming temporary custody, place an authorized representative of the Department in that residence until such time as a parent, guardian or custodian enters the home and expresses a willingness and apparent ability to resume permanent charge of the child, or until a relative enters the home and is willing and able to assume charge of the child until a parent, guardian or custodian enters the home and expresses such willingness and ability to resume permanent charge. After a caretaker has remained in the home for a period not to exceed 12 hours, the Department must follow those procedures outlined in Section 2-9, 3-11, 4-8 or 5-9 of the Juvenile Court Act of 1987.[16]

The Department shall have the authority, responsibilities and duties that a legal custodian of the child would have pursuant to subsection (9) of Section 1-3 of the Juvenile Court Act of 1987.[17] Whenever a child is taken into temporary custody pursuant to an investigation under the Abused and Neglected Child Reporting Act, or pursuant to a referral and acceptance under the Juvenile Court Act of 1987 of a minor in limited custody, the Department, during the period of temporary custody and before the child is brought before a judicial officer as required by Section 2-9, 3-11, 4-8 or 5-9 of the Juvenile Court Act of 1987, shall have the authority, responsibilities and duties that a legal custodian of the child would have under subsection (9) of Section 1-3 of the Juvenile Court Act of 1987.

A parent, guardian or custodian of a child in the temporary custody of the Department who would have custody of the child if he were not in the temporary custody of the Department may deliver to the Department a signed request that the Department surrender the temporary custody of the child. The Department may retain temporary custody of the child for 10 days after the receipt of the request, during which period the Department may cause to be filed a petition pursuant to the Juvenile Court Act of 1987. If a petition is so filed, the Department shall retain temporary custody of the child until the court orders otherwise. If a petition is not filed within the 10 day period, the child shall be surrendered to the custody of the requesting parent, guardian or custodian not later than the expiration of the 10 day period, at which time the authority and duties of the Department with respect to the temporary custody of the child shall terminate.

(n) The Department may place children under 18 years of age in licensed child care facilities when in the opinion of the Department, appropriate services aimed at family preservation have been unsuccessful or unavailable and such placement would be for their best interest. Payment for board, clothing, care, training and supervision of any child placed in a licensed child care facility may be made by the Department, by the parents or guardians of the estates of those children, or by both the Department and the parents or guardians, except that no payments shall be made by the Department for any child placed in a licensed child care facility for board, clothing, care, training and supervision of such a child that exceed the average per capita cost of maintaining and of caring for a child in institutions for dependent or neglected children operated by the Department. However, such restriction on payments does not apply in cases where children require specialized care and treatment for problems of severe emotional disturbance, physical disability, social adjustment, or any combination thereof and suitable facilities for the placement of such children are not available at payment rates within the limitations set forth in this Section. All reimbursements for services delivered shall be absolutely inalienable by assignment, sale, attachment, garnishment or otherwise.

(o) The Department shall establish an administrative review and appeal process for children and families who request or receive child welfare services from the Department. Children who are wards of the Department and are placed by private child welfare agencies, and foster families with whom those children are placed, shall be afforded the same procedural and appeal rights as children and families in the case of placement by the Department, including the right to an initial review of a private agency decision by that agency. The Department shall insure that any private child welfare agency, which accepts wards of the Department for placement, affords those rights to children and foster families. The

Department shall accept for administrative review and an appeal hearing a complaint made by a child or foster family concerning a decision following an initial review by a private child welfare agency. An appeal of a decision concerning a change in the placement of a child shall be conducted in an expedited manner.

(p) There is hereby created the Department of Children and Family Services Emergency Assistance Fund from which the Department may provide special financial assistance to families which are in economic crisis when such assistance is not available through other public or private sources and the assistance is deemed necessary to prevent dissolution of the family unit or to reunite families which have been separated due to child abuse and neglect. The Department shall establish administrative rules specifying the criteria for determining eligibility for and the amount and nature of assistance to be provided. The Department may also enter into written agreements with private and public social service agencies to provide emergency financial services to families referred by the Department. Special financial assistance payments shall be available to a family no more than once during each fiscal year and the total payments to a family may not exceed $500 during a fiscal year.

(q) The Department may receive and shall use, in its entirety, for the benefit of children any gift, donation or bequest of money or other property which is received on behalf of such children, or any financial benefits to which such children are or may become entitled while under the jurisdiction or care of the Department.

(r) The Department shall promulgate regulations encouraging all adoption agencies to voluntarily forward to the Department or its agent names and addresses of all persons who have applied for and have been approved for adoption of a hard-to-place or handicapped child and the names of such children who have not been placed for adoption. A list of such names and addresses shall be maintained by the Department or its agent, and coded lists which maintain the confidentiality of the person seeking to adopt the child and of the child shall be made available, without charge, to every adoption agency in the State to assist the agencies in placing such children for adoption. The Department may delegate to an agent its duty to maintain and make available such lists. The Department shall ensure that such agent maintains the confidentiality of the person seeking to adopt the child and of the child.

(s) The Department of Children and Family Services may establish and implement a program to reimburse Department and private child welfare agency foster parents licensed by the Department of Children and Family Services for damages sustained by the foster parents as a result of the malicious or negligent acts of foster children, as well as providing third party coverage for such foster parents with regard to actions of foster children to other individuals. Such coverage will be secondary to the foster parent liability insurance policy, if applicable. The program shall be funded through appropriations from the General Revenue Fund, specifically designated for such purposes.

(t) The Department shall perform home studies and investigations and shall exercise supervision over visitation as ordered by a court pursuant to the Illinois Marriage and Dissolution of Marriage Act[18] or the Adoption Act[19] only if:

(1) an order entered by an Illinois court specifically directs the Department to perform such services; and

(2) the court has ordered one or both of the parties to the proceeding to reimburse the Department for its reasonable costs for providing such services in accordance with Department rules, or has determined that neither party is financially able to pay.

(u) Whenever the Department places a child in a licensed foster home, group home, child care institution, or in a relative home, the Department shall provide to the caretaker:

(1) available detailed information concerning the child's educational and health history, and copies of immunization records (including insurance and medical card information);

(2) a copy of the child's portion of the client service plan, including any visitation arrangement, and all amendments or revisions to it as related to the child; and

(3) information containing details of the child's individualized educational plan when the child is receiving special education services.

The caretaker shall be informed of any known social or behavioral information (including, but not limited to, fire setting, perpetuation of sexual abuse, destructive behavior, and substance abuse) necessary to care for and safeguard the child.

Amended by P.A. 86-1475, Art. 3, § 3-15, eff. Jan. 10, 1991; P.A. 86-1482, § 1, eff. Jan. 14, 1991; P.A. 87-14, Art. 2, § 2-4 eff. July 24, 1991; P.A. 87-435, Art. 2, § 2-4, eff. Sept. 10, 1991; P.A. 87-617, § 1, eff. Jan. 1, 1992; P.A. 87-629, § 1, eff. Sept. 19, 1991.

[1] Chapter 37, ¶ 701-1 et seq. (repealed).
[2] Chapter 37, ¶ 801-1 et seq.
[3] Chapter 91½, ¶ 1-100 et seq.
[4] Paragraph 5005a of this chapter.
[5] Paragraph 5017a-4 of this chapter.
[6] Chapter 63, ¶ 3.1.
[7] Chapter 128, ¶ 107.
[8] Paragraph 9-6.3 of this chapter.
[9] Chapter 37, ¶ 705-7 (repealed).
[10] Chapter 37, ¶¶ 802-27, 803-28, 804-25 or 805-29.
[11] 42 U.S.C.A. § 602 et seq.
[12] Paragraph 2051 et seq. of this chapter.
[13] Paragraph 2057.12 of this chapter.
[14] Chapter 37, ¶ 705-2 (repealed).
[15] Chapter 37, ¶ 805-23.
[16] Chapter 37, ¶¶ 802-9, 803-11, 804-8 or 805-9.
[17] Chapter 37, ¶ 801-3.
[18] Chapter 40, ¶ 101 et seq.
[19] Chapter 40, ¶ 1501 et seq.

For text of paragraph as amended by P.A. 87-14, Art. 2, § 2-4; P.A. 87-435 Art. 2, § 2-4; P.A. 87-617, § 1; P.A. 87-629, § 1; P.A. 87-824, § 1, eff. July 1, 1992, see ¶ 5005, post.

For final legislative action, see note following ¶ 5005, post.

5005. Direct child welfare services

Text of paragraph as amended by P.A. 87-14, Art. 2, § 2-4; P.A. 87-435 Art. 2, § 2-4; P.A. 87-617, § 1; P.A. 87-629, § 1; P.A. 87-824, § 1, eff. July 1, 1992.

§ 5. To provide direct child welfare services when not available through other public or private child care or program facilities.

(a) For purposes of this Section:

(1) "Children" means persons found within the State who are under the age of 18 years. The term also includes persons under age 19 who:

(A) were committed to the Department pursuant to the Juvenile Court Act[1] or the Juvenile Court Act of 1987, as amended,[2] prior to the age of 18 and who continue under the jurisdiction of the court; or

(B) were accepted for care, service and training by the Department prior to the age of 18 and whose best interest in the discretion of the Department would be served by continuing that care, service and training because of severe emotional disturbances, physical disability, social adjustment or any combination thereof, or because of the need to complete an educational or vocational training program.

(2) "Homeless youth" means persons found within the State who are under the age of 19, are not in a safe and stable living situation and cannot be reunited with their families.

(3) "Child welfare services" means public social services which are directed toward the accomplishment of the following purposes:

(A) protecting and promoting the welfare of children, including homeless, dependent or neglected children;

(B) preventing or remedying, or as sisting in the solution of problems which may result in, the neglect, abuse, exploitation or delinquency of children;

(C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing the breakup of the family where the prevention of child removal is desirable and possible;

(D) restoring to their families children who have been removed, by the provision of services to the child and the families;

(E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate;

(F) assuring adequate care of children away from their homes in cases where the child cannot be returned home or cannot be returned home or cannot be placed for adoption;

(G) providing supportive services and living maintenance which contribute to the physical, emotional and social well-being of children who are pregnant and unmarried;

(H) providing shelter and independent living services for homeless youth; and

(I) placing and maintaining children in facilities that provide separate living quarters for children under the age of 18 and for children 18 years of age and older, unless a child 18 years of age is in the last year of high school education or vocational training, in an approved individual or group treatment program, or in a licensed shelter facility. The Department is not required to place or maintain children:

(i) who are in a foster home; or

(ii) who are developmentally disabled, as defined in the Mental Health and Developmental Disabilities Code;[3] or

(iii) who are female children who are pregnant, pregnant and parenting or parenting; or

(iv) who are siblings.

in facilities that provide separate living quarters for children 18 years of age and older and for children under 18 years of age.

(b) Nothing in this Section shall be construed to authorize the expenditure of public funds for the purpose of performing abortions.

(c) The Department shall establish and maintain tax-supported child welfare services and extend and seek to improve voluntary services throughout the State, to the end that services and care shall be available on an equal basis throughout the State to children requiring such services.

(d) The Director may authorize advance disbursements for any new program initiative to any agency contracting with the Department. As a prerequisite for an advance disbursement, the contractor must post a surety bond in the amount of the advance disbursement and have a purchase of service contract approved by the Department. The Department may pay up to 2 months operational expenses in advance. The amount of the advance disbursement shall be prorated over the life of the contract or the remaining months of the fiscal year, whichever is less, and the installment amount shall then be deducted from future bills. Advance disbursement authorizations for new initiatives shall not be made to any agency after that agency has operated during 2 consecutive fiscal years. The requirements of this Section concerning advance disbursements shall not apply with respect to the following: payments to local public agencies for child day care services as authorized by Section 5a of this Act;[4] and youth service programs receiving grant funds under Section 17a-4.[5]

(e) For the purpose of insuring effective state-wide planning, development, and utilization of resources for the day care of children, operated under various auspices, the Department is hereby designated to coordinate all day care activities for children of the State and shall:

(1) Develop on or before December 1, 1977, and update every year thereafter, a state comprehensive day-care plan for submission to the Governor which identifies high-priority areas and groups, relating them to available resources, and identifying the most effective approaches to the use of existing day care services. The State comprehensive day-care plan shall be made available to the General Assembly following the Governor's approval of the plan.

The plan shall include methods and procedures for the development of additional day care resources for children to meet the goal of reducing short-run and long-run dependency and to provide necessary enrichment and stimulation to the education of young children. Recommendation shall be made for State policy on optimum use of private and public, local, state and federal resources, including an estimate of the resources needed for the licensing and regulation of day care facilities.

A written report shall be submitted to the Governor and the General Assembly, annually, on February 15, and shall include an evaluation of developments over the preceding fiscal year, including cost-benefit analyses of various arrangements. Beginning on February 15, 1990 and every 2 years thereafter, the report shall also include the following:

(A) An assessment of the child care services, needs and available resources throughout the State and an assessment of the adequacy of existing child care services, including, but not limited to, services assisted under this Act and under any other program administered by other State agencies.

(B) A survey of day care facilities to determine the number of qualified caregivers, as defined by rule, attracted to vacant positions and any problems encountered by facilities in attracting and retaining capable caregivers.

(C) The average wages and salaries and fringe benefit packages paid to caregivers throughout the State, computed on a regional basis.

(D) The qualifications of new caregivers hired at licensed day care facilities during the previous 2 year period.

(E) Recommendations for increasing caregiver wages and salaries to insure quality care for children.

(F) Evaluation of the fee structure and income eligibility for child care subsidized by the State.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Research Unit, as required by Section 3.1 of the General Assembly Organization Act,[6] and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act.[7]

(2) Establish policies and procedures for developing and implementing interagency agreements with other agencies of the State providing child care services or reimbursement for such services.

(3) In cooperation with other State agencies, develop and implement a resource and referral system for the State of Illinois either within the Department or by contract with local or regional agencies. Funding for implementation of this system may be provided through Department appropriations or other inter-agency funding arrangements. The resource and referral system shall provide at least the following services:

(A) assembling and maintaining a data base on the supply of child care services;

(B) providing information and referrals for parents;

(C) coordinating the development of new child care resources;

(D) providing technical assistance and training to child care service providers; and

(E) recording and analyzing the demand for child care services.

The Department shall complete implementation of this resource and referral system in all regions of the State by January 1, 1992.

(4) Conduct day care planning activities with the following priorities:

(A) development of voluntary day care resources wherever possible, with the provision for grants-in-aid only where demonstrated to be useful and necessary as incentives or supports;

(B) emphasis on service to children of recipients of public assistance where such service will allow training or employment of the parent toward achieving the goal of independence;

(C) maximum employment of recipients of public assistance in day care centers and day care homes, operated in conjunction with short-term work training programs;

(D) care of children from families in stress and crises whose members potentially may become, or are in danger of becoming, non-productive and dependent;

(E) expansion of family day care facilities wherever possible;

(F) location of centers in economically depressed neighborhoods, preferably in multi-service centers with cooperation of other agencies;

(G) use of existing facilities free of charge or for reasonable rental wherever possible in lieu of construction;

(H) development of strategies for assuring a more complete range of day care options, including provision of day care services in homes, in schools or in centers, which will enable a parent or parents to complete a course of education or obtain or maintain employment.

Emphasis shall be given to support services which will help to ensure such parents' graduation from high school and to services for participants in the Project Chance program of job training conducted by the Illinois Department of Public Aid.

(5) Actively stimulate the development of public and private resources at the local level. It shall also seek the fullest utilization of federal funds directly or indirectly available to the Department.

Where appropriate, existing non-governmental agencies or associations shall be involved in planning by the Department.

(f) The Department, pursuant to a contract with the Illinois Department of Public Aid, may provide child care services to former recipients of assistance under The Illinois Public Aid Code as authorized by Section 9-6.3 of that Code.[8]

(g) The Department shall establish rules and regulations concerning its operation of programs designed to meet the goals of child protection, family preservation, family reunification, adoption and youth development, including but not limited to:

(1) adoption;
(2) foster care;
(3) family counseling;
(4) protective services;
(5) service to unwed mothers;
(6) homemaker service;
(7) return of runaway children;
(8) independent living skills and shelter for homeless youth;
(9) placement under Section 5-7 of the Juvenile Court Act[9] or Section 2-27, 3-28, 4-25 or 5-29 of the Juvenile Court Act of 1987[10] in accordance with the federal Adoption Assistance and Child Welfare Act of 1980;[11] and
(10) interstate services.

Rules and regulations established by the Department shall include provisions for training Department staff and the staff of Department grantees, through contracts with other agencies or resources, in alcohol and drug abuse screening techniques to identify children and adults who should be referred to an alcohol and drug abuse treatment program for professional evaluation.

(h) If the Department finds that there is no appropriate program or facility within or available to the Department for a ward and that no licensed private facility has an adequate and appropriate program or none agrees to accept the ward, the Department shall create an appropriate individualized, program- oriented plan for such ward. The plan may be developed within the Department or through purchase of services by the Department to the extent that it is within its statutory authority to do.

(i) Service programs shall be available throughout the State and shall include but not be limited to the following services:

(1) case management;
(2) homemakers;
(3) counseling;
(4) parent education;
(5) day care; and
(6) emergency assistance and advocacy.

In addition, the following services may be made available to assess and meet the needs of children and families:

(1) comprehensive family-based services;
(2) assessments;
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The Department shall provide transportation for any of the services it makes available to children or families or for which it refers children or families.

(j) The Department may provide financial assistance, and shall establish rules and regulations concerning such assistance, to persons who adopt physically or mentally handicapped, older and other hard-to-place children who immediately prior to their adoption were legal wards of the Department. The Department may also provide financial assistance, and shall establish rules and regulations for such assistance, to persons appointed guardian of the person under Section 5-7 of the Juvenile Court Act or Section 2-27, 3-28, 4-25 or 5-29 of the Juvenile Court Act of 1987 for children who were wards of the Department for 12 months immediately prior to the appointment of the successor guardian and for whom the Department has set a goal of permanent family placement with a foster family.

The amount of assistance may vary, depending upon the needs of the child and the adoptive parents, but must be less than the monthly cost of care of the child in a foster home. Special purpose grants are allowed where the child requires special service but such costs may not exceed the amounts which similar services would cost the Department if it were to provide or secure them as guardian of the child.

(k) The Department shall accept for care and training any child who has been adjudicated neglected or abused, or dependent committed to it pursuant to the Juvenile Court Act or the Juvenile Court Act of 1987.

(l) The Department shall accept for family preservation services, and shall provide appropriate services to, any family whose child has been placed in substitute care, any persons who have adopted a child and require post-adoption services, or any persons whose child or children are at risk of being placed outside their home as documented by an "indicated" report of suspected child abuse or neglect determined pursuant to the Abused and Neglected Child Reporting Act.[12]

The Department shall notify the child and his family of the Department's responsibility to offer and provide family preservation services as identified in the service plan. The child and his family shall be eligible for services as soon as the report is determined to be "indicated". The Department may offer services to any child or family with respect to whom a report of suspected child abuse or neglect has been filed, prior to concluding its investigation under Section 7.12 of the Abused and Neglected Child Reporting Act.[13] However, the child's or family's willingness to accept services shall not be considered in the investigation. The Department may also provide services to any child or family who is the subject of any report of suspected child abuse or neglect or may refer such child or family to services available from other agencies in the community, even if the report is determined to be unfounded, if the conditions in the child's or family's home are reasonably likely to subject the child or family to future reports of suspected child abuse or neglect. Acceptance of such services shall be voluntary.

The Department may, at its discretion except for those children also adjudicated neglected or dependent, accept for care and training any child who has been adjudicated delinquent, addicted, as a truant minor in need of supervision or as a minor requiring authoritative intervention, under the Juvenile Court Act or the Juvenile Court Act of 1987, but no such child shall be committed to the Department by any court without the approval of the Department, except a minor less than 13 years of age committed to the Department under subsection (1)(a)(4) of Section 5-2 of the Juvenile Court Act[14] or Section 5-23 of the Juvenile Court Act of 1987.[15]

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(1) it has received a written consent to such temporary custody signed by the parents of the child or by the parent having custody of the child if the parents are not living together or by the

guardian or custodian of the child if the child is not in the custody of either parent, or

(2) the child is found in the State and neither a parent, guardian nor custodian of the child can be located.

If the child is found in his or her residence without a parent, guardian, custodian or responsible caretaker, the Department may, instead of removing the child and assuming temporary custody, place an authorized representative of the Department in that residence until such time as a parent, guardian or custodian enters the home and expresses a willingness and apparent ability to resume permanent charge of the child, or until a relative enters the home and is willing and able to assume charge of the child until a parent, guardian or custodian enters the home and expresses such willingness and ability to resume permanent charge. After a caretaker has remained in the home for a period not to exceed 12 hours, the Department must follow those procedures outlined in Section 2-9, 3-11, 4-8 or 5-9 of the Juvenile Court Act of 1987.[16]

The Department shall have the authority, responsibilities and duties that a legal custodian of the child would have pursuant to subsection (9) of Section 1-3 of the Juvenile Court Act of 1987.[17] Whenever a child is taken into temporary custody pursuant to an investigation under the Abused and Neglected Child Reporting Act, or pursuant to a referral and acceptance under the Juvenile Court Act of 1987 of a minor in limited custody, the Department, during the period of temporary custody and before the child is brought before a judicial officer as required by Section 2-9, 3-11, 4-8 or 5-9 of the Juvenile Court Act of 1987, shall have the authority, responsibilities and duties that a legal custodian of the child would have under subsection (9) of Section 1-3 of the Juvenile Court Act of 1987.

A parent, guardian or custodian of a child in the temporary custody of the Department who would have custody of the child if he were not in the temporary custody of the Department may deliver to the Department a signed request that the Department surrender the temporary custody of the child. The Department may retain temporary custody of the child for 10 days after the receipt of the request, during which period the Department may cause to be filed a petition pursuant to the Juvenile Court Act of 1987. If a petition is so filed, the Department shall retain temporary custody of the child until the court orders otherwise. If a petition is not filed within the 10 day period, the child shall be surrendered to the custody of the requesting parent, guardian or custodian not later than the expiration of the 10 day period, at which time the authority and duties of the Department with respect to the temporary custody of the child shall terminate.

(n) The Department may place children under 18 years of age in licensed child care facilities when in the opinion of the Department, appropriate services aimed at family preservation have been unsuccessful or unavailable and such placement would be for their best interest. Payment for board, clothing, care, training and supervision of any child placed in a licensed child care facility may be made by the Department, by the parents or guardians of the estates of those children, or by both the Department and the parents or guardians, except that no payments shall be made by the Department for any child placed in a licensed child care facility for board, clothing, care, training and supervision of such a child that exceed the average per capita cost of maintaining and of caring for a child in institutions for dependent or neglected children operated by the Department. However, such restriction on payments does not apply in cases where children require specialized care and treatment for problems of severe emotional disturbance, physical disability, social adjustment, or any combination thereof and suitable facilities for the placement of such children are not available at payment rates within the limitations set forth in this Section. All reimbursements for services delivered shall be absolutely inalienable by assignment, sale, attachment, garnishment or otherwise.

(o) The Department shall establish an administrative review and appeal process for children and families who request or receive child welfare services from the Department. Children who are wards of the Department and are placed by private child welfare agencies, and foster families with whom those children are placed, shall be afforded the same procedural and appeal rights as children and families in the case of placement by the Department, including the right to an initial review of a private agency decision by that agency. The Department shall insure that any private child welfare agency, which accepts wards of the Department for placement, affords those rights to children and foster families. The Department shall accept for administrative review and an appeal hearing a complaint made by a child or foster family concerning a decision following an initial review by a private child welfare agency. An appeal of a decision concerning a change in the placement of a child shall be conducted in an expedited manner.

(p) There is hereby created the Department of Children and Family Services Emergency Assistance Fund from which the Department may provide special financial assistance to families which are in economic crisis when such assistance is not available through other public or private sources and the assistance is deemed necessary to prevent dissolution of the family unit or to reunite families which have been separated due to child abuse and neglect. The Department shall establish administrative rules specifying the criteria for determining eligibility for and the amount and nature of assistance to be provided. The Department may also enter into written agreements with private and public social service agencies to provide emergency financial services to families referred by the Department. Special financial assistance payments shall be available to a family no more than once during each fiscal year and the total payments to a family may not exceed $500 during a fiscal year.

(q) The Department may receive and shall use, in its entirety, for the benefit of children any gift, donation or bequest of money or other property which is received on behalf of such children, or any financial benefits to which such children are or may become entitled while under the jurisdiction or care of the Department.

(r) The Department shall promulgate regulations encouraging all adoption agencies to voluntarily forward to the Department or its agent names and addresses of all persons who have applied for and have been approved for adoption of a hard-to-place or handicapped child and the names of such children who have not been placed for adoption. A list of such names and addresses shall be maintained by the Department or its agent, and coded lists which maintain the confidentiality of the person seeking to adopt the child and of the child shall be made available, without charge, to every adoption agency in the State to assist the agencies in placing such children for adoption. The Department may delegate to an agent its duty to maintain and make available such lists. The Department shall ensure that such agent maintains the confidentiality of the person seeking to adopt the child and of the child.

(s) The Department of Children and Family Services may establish and implement a program to reimburse Department and private child welfare agency foster parents licensed by the Department of Children and Family Services for damages sustained by the foster parents as a result of the malicious or negligent acts of foster children, as well as providing third party coverage for such foster parents with regard to actions of foster children to other individuals. Such coverage will be secondary to the foster parent liability insurance policy, if applicable. The program shall be funded through appropriations from the General Revenue Fund, specifically designated for such purposes.

(t) The Department shall perform home studies and investigations and shall exercise supervision over visitation as ordered by a court pursuant to the Illinois Marriage and Dissolution of Marriage Act[18] or the Adoption Act[19] only if:

(1) an order entered by an Illinois court specifically directs the Department to perform such services; and

(2) the court has ordered one or both of the parties to the proceeding to reimburse the Department for its reasonable costs for providing such services in accordance with Department rules, or has determined that neither party is financially able to pay.

The Department shall provide written notification to the court of the specific arrangements for supervised visitation and projected monthly costs within 60 days of the court order. The Department shall send to the court information related to the costs incurred except in cases where the court has determined the parties are financially unable to pay. The court may order additional periodic reports as appropriate.

(u) Whenever the Department places a child in a licensed foster home, group home, child care institution, or in a relative home, the Department shall provide to the caretaker:

(1) available detailed information concerning the child's educational and health history, and copies of immunization records (including insurance and medical card information);

(2) a copy of the child's portion of the client service plan, including any visitation arrangement, and all amendments or revisions to it as related to the child; and

(3) information containing details of the child's individualized educational plan when the child is receiving special education services.

The caretaker shall be informed of any known social or behavioral information (including, but not limited to, fire setting, perpetuation of sexual abuse, destructive behavior, and substance abuse) necessary to care for and safeguard the child.

Amended by P.A. 87-14, Art. 2, § 2-4 eff. July 24, 1991; P.A. 87-435, Art. 2, § 2-4, eff. Sept. 10, 1991; P.A. 87-617, § 1, eff. Jan. 1, 1992; P.A. 87-629, § 1, eff. Sept. 19, 1991; P.A. 87-824, § 1, eff. July 1, 1992.

[1] Chapter 37, ¶ 701-1 et seq. (repealed).
[2] Chapter 37, ¶ 801-1 et seq.
[3] Chapter 91½, ¶ 1-100 et seq.
[4] Paragraph 5005a of this chapter.
[5] Paragraph 5017a-4 of this chapter.
[6] Chapter 63, ¶ 3.1.
[7] Chapter 128, ¶ 107.
[8] Paragraph 9-6.3 of this chapter.
[9] Chapter 37, ¶ 705-7 (repealed).
[10] Chapter 37, ¶¶ 802-27, 803-28, 804-25 or 805-29.
[11] 42 U.S.C.A. § 602 et seq.
[12] Paragraph 2051 et seq. of this chapter.
[13] Paragraph 2057.12 of this chapter.
[14] Chapter 37, ¶ 705-2 (repealed).
[15] Chapter 37, ¶ 805-23.
[16] Chapter 37, ¶¶ 802-9,803-11, 804-8 or 805-9.
[17] Chapter 37, ¶ 801-3.
[18] Chapter 40, ¶ 101 et seq.
[19] Chapter 40, ¶ 1501 et seq.

For text of paragraph as amended by P.A. 87-14, Art. 2, § 2-4; P.A. 87-435, Art. 2, § 2-4; P.A. 87-617, § 1; P.A. 87-629, § 1, see ¶ 5005, ante.

P.A. 87-14 redesignated provisions: in subpars. (a)(1) and (a)(2), substituted "age 19" for "age 21", and made other non-substantive changes.

APPENDIX D

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER b: PROGRAM & TECHNICAL SUPPORT

PART 335
RELATIVE HOME PLACEMENT

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AUTHORITY: Implementing and authorized by Section 5 of "AN ACT creating the Department of Children and Family Services, codifying its powers and duties, and repealing certain Acts and Sections herein named" (Ill. Rev. Stat. 1983, ch. 23, par. 5005).

SOURCE: Adopted at 10 Ill. Reg. 4513, effective April 1, 1986.

SUBPART A: GENERAL PROVISIONS

Section 335.100 Purpose

The purpose of this Part is to specify that related caretakers of children for whom the Department of Children and Family Services is legally responsible must meet the standards prescribed by this Part, which are substantially the same as those required for licensure as foster family homes unless the related caretaker has been granted a waiver of those requirements in accordance with Section 335.202, and to prescribe standards for the approval of relative foster family homes.

Section 335.102 Definitions

"Approval" or "Approved" means that a foster family home wherein the caretaker is related to the child(ren) in care has met the standards prescribed by this Part. Such standards are substantially the same as those promulgated for licensure of unrelated foster family homes pursuant to the Child Care Act of 1969 (Ill. Rev. Stat. 1983, ch. 23, par. 2211 et seq.) and codified at 89 Ill. Adm. Code 402, Licensing Standards for Foster Family Homes.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or whose parent(s) has signed an adoptive surrender or voluntary placement agreement with the Department in accordance with 89 Ill. Adm. Code 302.

"Department" means the Department of Children and Family Services.

"Director" means the Director of the Department of Children and Family Services.

"Related Caretaker" means a person who provides care for a child or children for whom the Department is legally responsible by reason of temporary protective custody, court ordered custody or guardianship, or an adoptive surrender or voluntary placement agreement signed by the parent(s) and to whom the child or children have any of the following relationships by blood, marriage, or adoption: grandfather, grandmother, great-grandfather, great-grandmother, great-uncle, great-aunt, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece or first cousin.

"Relative foster family home" means the home of a related caretaker approved in accordance with the standards prescribed by this Part.

"Supervising Agency" as used in this Part, means a licensed child welfare agency, a license-exempt agency, or the Department of Children and Family Services.

SUBPART B: PLACEMENT

Section 335.200 Placement Pre-Conditions

a) Effective with the adoption of these rules, no child for whom the Department is legally responsible shall be placed with a relative unless the pre-conditions specified in this Section have been met. When a child is already in the care of a relative when the Department assumes legal responsibility, the pre-conditions of this Section shall be met within forty-eight (48) hours of the Department's assuming legal responsibility for the child.

b) Staff of the supervising agency shall meet with the proposed related caretaker and ascertain that the relative:

  1) is capable of protecting the child(ren) from further harm by the parent(s) or other caretaker(s) whose action or inaction allegedly threatened the child(ren)'s safety or well-being as determined by a child abuse or neglect investigation pursuant to the Abused and Neglected Child Reporting Act (Ill. Rev. Stat. 1983, ch. 23, par. 2051 et seq.);

Rev. Stat. 1983, ch. 23, par. 2051 et seq.);

2) agrees not to release the child to anyone, including parent(s) or other relative(s), except as authorized by the supervising agency; and

3) is willing to cooperate with the agency, the child(ren)'s parent(s) and other resource persons to help develop and achieve the permanency goal recorded in the child(ren)'s service plan.

c) Prior to placement with a related caretaker, (or within 48 hours of the Department's assuming legal responsibility for a child already in the care of a related caretaker) staff of the supervising agency shall visit the home of the proposed caretaker to determine that the following standards are met:

1) the home is free from observable hazards;

2) prescription and non-prescription drugs, dangerous household supplies, dangerous tools, weapons, guns and ammunition are stored in places inaccessible to children;

3) basic utilities -- water, heat, electricity -- are in operation;

4) sleeping arrangements are suitable to the age and sex of the child(ren) as prescribed by Section 335.304;

be provided at all times including times when the related caretaker is employed or otherwise engaged in activity outside of the home;

7) the related caretaker has sufficient financial resources to provide basic necessities as defined by Section 335.310 (f), for themselves and their own child(ren);
8) the medical needs of the child(ren) can be met; and
9) no member of the household appears to have a communicable disease which could pose a threat to the health of the related child(ren) or a physical impairment which could affect the ability of the caretaker to provide care to the related child(ren).

d) Prior to or concurrent with placement in a related caretaker's home, staff of the supervising agency shall document, on the form prescribed by the Department, that the pre-conditions prescribed by this Section have been met.

e) Children for whom the Department is legally responsible who are in the care of related caretakers approved in accordance with this Part shall receive the same care and services as children in the care of unrelated caretakers unless otherwise required by this Part.

Section 335.202 Continuation of Placement

a) Related caretakers shall meet the standards prescribed in Subpart C

e) Children for whom the Department is legally responsible who are in the care of related caretakers approved in accordance with this Part shall receive the same care and services as children in the care of unrelated caretakers unless otherwise required by this Part.

Section 335.202 Continuation of Placement

a) Related caretakers shall meet the standards prescribed in Subpart C within 90 days of the initial placement.

b) Placement staff of the supervising agency shall assure that no child for whom the Department is legally responsible remains in the care of a related caretaker in excess of 90 days unless:

   1) the related caretaker has been approved as meeting standards prescribed by Subpart C; or
   2) the related caretaker is awaiting the results of a background check or medical examination completed within 90 days of the child's initial placement; or
   3) a waiver as specified in subsection 335.202(d) has been requested and granted by the Director.

c) Related caretakers who were providing care for related children for whom the Department is legally responsible prior to the adoption of these rules shall meet the Approval Standards for Relative Foster Family Homes

   2) specify how the health, safety, or welfare of the related child(ren) will be safeguarded by other means;
   3) specify why removal of the child(ren) from the related caretaker's home would be detrimental to the child(ren)'s well-being and plan for permanency should a waiver not be granted; and
   4) specify the date(s) the child(ren) was/were placed with the related caretaker(s).

e) The decision of the Director regarding waivers granted or denied in accordance with subsection (d) above shall be in writing.

f) Waivers granted in accordance with subsection (d) above shall be valid for the duration of approvals granted pursuant to Subpart C.

SUBPART C: APPROVAL STANDARDS FOR RELATIVE FOSTER FAMILY HOMES

Section 335.300 Provisions Pertaining To Approval

a) Approval of a relative foster family home shall be valid for two years unless one of the following occurs:
   1) The foster family moves to an address other than that for which approval was granted;
   2) The foster parent(s) substantially violate the requirements of this Part so as to endanger the health, safety or welfare of the child(ren). Refusal to cooperate with the supervising agency is a factor taken into consideration in determining whether the violation is substantial; or

Section 335.300 Provisions Pertaining To Approval

a) Approval of a relative foster family home shall be valid for two years unless one of the following occurs:
   1) The foster family moves to an address other than that for which approval was granted;
   2) The foster parent(s) substantially violate the requirements of this Part so as to endanger the health, safety or welfare of the child(ren). Refusal to cooperate with the supervising agency is a factor taken into consideration in determining whether the violation is substantial; or
   3) The composition of the relative foster family home changes (as a result of divorce, separation or death) or members are added to the household by means other than child(ren) born to or adopted by the relative foster parent(s) after the home is approved.

b) The related foster parent(s) shall notify the supervising agency within thirty (30) days of a change of address, separation, divorce, or death of a caretaker for whom the home is approved.

c) Should any of the events specified in Section 335.300 (a) occur or within 90 days of the expiration date of the most recent approval, the foster family home shall be submitted for re-evaluation and approval. The child(ren) shall remain in the home during the re-evaluation provided the requirements of Section 335.200 continue to be met.

Portable and fixed space heaters in areas occupied by children shall be separated by fire resistant partitions or barriers to prevent contact with the heater.

d) Prescription and non-prescription drugs, dangerous household supplies, dangerous tools, weapons, guns, and ammunition shall be kept in a safe place. Loaded guns shall not be kept in a foster home unless required by law enforcement officers and in accordance with their safety procedures.

e) Healthy household pets which present no danger to children are permitted. A licensed veterinarian shall certify that the animals are free of diseases that could endanger the health of children and that dogs and cats have been inoculated for rabies. If certification of inoculation is not available, animals shall be confined at all times in an area inaccessible to children.

f) The foster home shall have an operating telephone on the premises.

g) The home shall be equipped with a minimum of one smoke detector on every floor level, including attic and basement.

h) The foster home shall have fire and emergency evacuation plans which are to be discussed and routinely rehearsed with the child(ren).

Section 335.304 Requirements For Sleeping Arrangements

a) Each child for whom the home is approved shall be provided his or her own bed or crib, except that two related children of the same sex with

f) The foster home shall have an operating telephone on the premises.

g) The home shall be equipped with a minimum of one smoke detector on every floor level, including attic and basement.

h) The foster home shall have fire and emergency evacuation plans which are to be discussed and routinely rehearsed with the child(ren).

Section 335.304 Requirements For Sleeping Arrangements

a) Each child for whom the home is approved shall be provided his or her own bed or crib, except that two related children of the same sex with no more than two years difference in their ages may share a double-sized (or larger) bed.

b) A child under six years of age may share a sleeping room with one related adult provided the child is provided with his or her own bed or crib and space requirements are met except that a female child shall not share a sleeping room with an adult male. A child over six years of age may share a sleeping room with one related adult of the same sex provided the child is provided with his or her own bed and space requirements are met.

c) There shall be a minimum of 40 square feet of floor space per person, excluding closet and wardrobe area, in a sleeping room occupied by a child or children.

d) The room shall be exposed to an outside window or shall have auxiliary means of ventilation.

e) The springs and mattresses on each bed requiring such shall be level.

i) Sleeping room shall be comfortable and shall be furnished suitably for the age and sex of the child.
j) Storage space shall be provided to accommodate the personal belongings of each child.
k) Basements or attics shall not be used for sleeping unless approved by the supervising agency. To be used for sleeping, basements and attics shall have two exits with one exit leading directly to the outside with means to safely reach ground level. An outside window operable from the inside (without the use of tools) and providing an unobstructed opening of not less than 5.7 square feet in area may be used as a second exit provided it is not more than 44 inches above the floor. In addition, the opening shall be at least 20 inches in width, with a corresponding height to give 5.7 square feet. The opening shall be at least 24 inches in height with a corresponding width to give 5.7 square feet.

Section 335.306 Nutrition and Meals

a) The foster home shall provide at least three balanced meals per day in quantities sufficient to meet the recommended dietary allowances of the National Food and Nutrition Board for nutritional needs of children as contained in 21 C.F.R. 104.20 (d)(3) (1985) (this section contained no later amendments or editions). The time span between meals shall not be greater than 14 hours (overnight).
b) A child requiring a special diet due to medical reasons, allergic reactions, or religious beliefs shall be

Section 335.306 Nutrition and Meals

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b) A child requiring a special diet due to medical reasons, allergic reactions, or religious beliefs shall be provided meals in accordance with the child's needs.

c) The foster home shall consider the child's nutritional needs in relationship to the sex, age, religious beliefs and cultural background of the child. Otherwise, meals served to the children shall be substantially the same as those served to other family members.

d) Meals shall be served in an unhurried manner, under clean and sanity conditions. Children shall be encouraged to eat the food that is served, but shall not be subjected to coercion or forced feeding.

e) Children may be allowed to assist in meal preparation under adult supervision.

Section 335.308 Business and Employment of Relative Foster Parents

a) An unrelated individual may be allowed to share the living arrangements, regardless of whether the foster family profits from the arted but shall not interfere with the care of the child(ren) or endanger the health, safety and welfare of the child(ren). The supervising agency must know and approve of any business operation.

c) Prior approval for outside employment or activity shall be granted by the supervising agency only when the agency determines that such outside employment or activity will not interfere with the proper care of the foster child(ren). When foster parents receive approval for employment or activity outside the home, provision shall be made for adequate supervision of the child(ren).

Section 335.310 Qualifications of Relative Foster Parents

a) The foster parent(s) shall be related to the child(ren) as defined by this Part, and shall be either single or a man and woman married to each other. Each foster parent shall be willing to assume appropriate responsibilities for the child or children for whom care is provided.

b) Foster parents shall be stable, law abiding, responsible, mature individuals, at least 21 years of age, who shall have passed the background check required for foster parents in 89 Ill. Adm. Code 380, Background Check of Foster Family Home Applicants, and shall be able to accept agency supervision.

c) Foster parents shall supervise children in their care in an effort to assure compliance with laws including, but not limited to, criminal laws.

ties for the child or children for whom care is provided.

b) Foster parents shall be stable, law abiding, responsible, mature individuals, at least 21 years of age, who shall have passed the background check required for foster parents in 89 Ill. Adm. Code 380, Background Check of Foster Family Home Applicants, and shall be able to accept agency supervision.

c) Foster parents shall supervise children in their care in an effort to assure compliance with laws including, but not limited to, criminal laws.

d) Foster parents shall provide the names and addresses of at least three unrelated references who can attest to their moral character.

e) Unless parental rights are terminated, the foster parents shall respect and support the child(ren)'s ties to his or her biological parent(s) and shall cooperate with the supervising agency in this regard.

f) The foster family shall demonstrate an ability to manage their financial resources (income, governmental benefits, other assets) so as to provide basic necessities (shelter, food, clothing, utilities and essential medical care) for themselves, their own child(ren), and the related child(ren) for whom the home is approved.

g) The conduct or behavior of members of the household shall not endanger the health, safety, or welfare of the child(ren) in care.

Section 335.312 Background Inquiry

criminal history is present Department employees, designated by the Director of the Department, shall review the materials focusing on the relationship between the offense which was the basis for the conviction and the person's ability to perform responsibly as a foster parent. The following shall be considered:

1) The type of crime for which the individual was convicted;
2) The number of crimes for which the individual was convicted;
3) The nature of the offense(s);
4) The age of the individual at the time of the conviction;
5) The length of time that has elapsed since the last conviction;
6) The relationship of the crime and the capacity to care for children;
7) Evidence of rehabilitation; and
8) Opinions of community members concerning the individual in question.

Section 335.314 Health of Relative Foster Family

a) Foster parents and all members of the household shall provide medical evidence that they are free of communicable diseases or physical and mental conditions which affect the ability of the family to provide care.
b) Prior to approval, the foster parents shall furnish the supervising agency with a medical report on forms provided by the agency for each member of the household. A medical report shall be obtained for the foster parent(s), their child(ren), other persons residing in the foster home,

Section 335.314 Health of Relative Foster Family

a) Foster parents and all members of the household shall provide medical evidence that they are free of communicable diseases or physical and mental conditions which affect the ability of the family to provide care.

b) Prior to approval, the foster parents shall furnish the supervising agency with a medical report on forms provided by the agency for each member of the household. A medical report shall be obtained for the foster parent(s), their child(ren), other persons residing in the foster home, and other persons regularly assisting in child care. The medical reports shall not be more than one year old. Copies of medical examinations of school-age children who are members of the household which were completed in accordance with the requirements of Section 27-8.1 of The School Code (Ill. Rev. Stat. 1983, Ch. 122, par. 27-8.1) are acceptable provided copies of the medical examinations are on file with the supervising agency. Medical examinations shall be at the expense of the foster parent(s) or member of the household.

c) If there is a question whether the mental or emotional health of the foster parent(s) or other adult members of the household may endanger a child or children, clinical evaluations and reports may be required by the supervising agency. Clinical evaluations shall be at the expense of the supervising agency.

d) Medical re-examinations of the foster parent(s) and other members of the physician has reason to believe, that the foster parent(s) or a member of the household has a communicable disease or other physical impairment. Medical reexaminations shall be at the expense of the foster parent(s) or member of the household.

Section 335.316 Number of Children Served

a) The maximum number of children for which a foster family home shall be approved shall be eight (including foster parent's own child or children and other members of the household under 18 years of age whose parent(s) or guardian does not reside in the home) unless all of the related children for whom the home is approved are of common parentage. The maximum number of eight shall not include other children whose parent(s) or guardian is/are members of the household and assume full responsibility for their care. Nor shall the maximum of eight include children born to or adopted by the foster parent(s) after the home is initially approved.

b) No more than 4 children under the age of 6, including the foster parent(s)' own children, shall be cared for at any one time. No more than 2 of these children, including the family-'s own children, shall be under the age of 2 unless the foster parent(s) is/are aided by a child care assistant other than a foster child. Such child care assistant shall be at least 14 years of age and shall be considered a member of the household for purposes of compliance with this Part, whether the assistant resides in the foster home or elsewhere. A or adopted by the foster parent(s) after the home is initially approved.

b) No more than 4 children under the age of 6, including the foster parent(s)' own children, shall be cared for at any one time. No more than 2 of these children, including the family's own children, shall be under the age of 2 unless the foster parent(s) is/are aided by a child care assistant other than a foster child. Such child care assistant shall be at least 14 years of age and shall be considered a member of the household for purposes of compliance with this Part, whether the assistant resides in the foster home or elsewhere. A child care assistant 14 but less than 21 years of age shall be responsible for the care of children only when at least one relative foster parent is present in the home.

c) When determining how many children the foster family home shall serve, children who have special needs due to physical, mental, or emotional disabilities shall be considered at the level at which they function.

Section 335.318 Meeting Basic Needs of Children

a) All children in the foster family shall be treated equitably.

b) All children in the home shall be protected from exploitation, neglect, and abuse. Suspected child abuse or neglect shall be reported to the supervising agency and to the Department immediately.

c) Children under the age of 10 shall not be left in the home without supervision by a responsible person.

ships through participation in schools, and other community and group activities. Each child shall have the opportunity to invite friends to the foster home and to visit in the home of friends.

f) Trips away from the foster home which exceed 72 hours must be approved by the foster child's guardian or legal custodian.

g) Foster parent(s) shall assist the child(ren) in the proper handling of money by providing a personal allowance based upon the child(ren)'s age and ability to manage the money. Adolescents may be allowed to earn additional spending money.

h) Each child shall have the opportunity to learn to assume some responsibility for himself or herself and for household duties in accordance with his or her age, health, and ability. No child shall be permitted to do tasks which are hazardous, dangerous, or risk harm to the child.

i) Foster parent(s) shall encourage the child(ren) to engage in appropriate indoor and outdoor recreation.

j) The supervising agency shall immediately be notified of any situation that affects the care of the child, including but not limited to death, serious illness, incarceration, or any other significant occurrence.

Section 335.320 Health Care of Children

a) Each child shall have a medical and dental check-up once a year or upon medical or dental recommendation.

b) In case of sickness or accident, immediate medical care shall be secured for the child in accordance

i) Foster parent(s) shall encourage the child(ren) to engage in appropriate indoor and outdoor recreation.

j) The supervising agency shall immediately be notified of any situation that affects the care of the child, including but not limited to death, serious illness, incarceration, or any other significant occurrence.

Section 335.320 Health Care of Children

a) Each child shall have a medical and dental check-up once a year or upon medical or dental recommendation.

b) In case of sickness or accident, immediate medical care shall be secured for the child in accordance with the supervising agency's directions.

c) Immunizations and tests, unless exempt on religious grounds, shall be administered as required by the Department of Public Health regulations or as recommended by a physician.

d) Foster parent(s) shall keep the supervising agency informed of the child(ren)'s health problems, including alcoholism and drug abuse.

e) No prescription drugs or medicines shall be given to a foster child without a physician's prescription or authorization.

f) Foster parent(s) shall thoroughly acquaint anyone caring for the foster child(ren) in their absence with the foregoing health requirements.

Section 335.322 Religion

a) The religious beliefs and rights of the child(ren) shall be legally protected.

b) Each child shall be given religious instruction in his or her own faith, or that of his or her parent(s), unless there is written consent of the parent(s) or guardian (if residual parental rights have been legally terminated) for the child to participate in religious instruction and to attend the facility of another faith. This shall include consent to baptism or confirmation.

c) Children shall be permitted to participate in religious services either singly or in groups.

Section 335.324 Education

a) Foster parent(s) shall encourage each child to complete high school or vocational training in accordance with his or her aptitude. Foster parent(s) shall cooperate with the supervising agency in the child(ren)'s educational plan(s).

b) Children shall be permitted and encouraged to participate in extra-curricular activities including sports, art and music to the extent of their interests, abilities, and talents.

c) The supervising agency shall ensure that the foster parent(s) shall maintain contact with those serving the educational needs of the child(ren) and seek their cooperation to assure that:

    1) Child(ren) is/are placed in appropriate grades and programs; and
    2) There is periodic evaluation of individual children.

d) The supervising agency shall ensure that each child is provided with the necessary school supplies, materials and equipment.

Section 335.326 Discipline of Children

a) Discipline shall be appropriate to the age of the child, related to the child's act, and shall not be out of proportion to the particular inappropriate behavior. Discipline shall be handled without prolonged delay.

b) The foster parent(s) shall be responsible for the discipline of the child. Discipline shall never be delegated to the child's peer or peers, nor to persons who are strangers to the child.

c) No child shall be subjected to corporal (physical) punishment, verbal abuse, threats or derogatory remarks about the child or his or her family.

d) No child shall be deprived of a meal or part of a meal as punishment.

e) No child shall be deprived of visits with family or other persons with whom he or she has established a parenting bond as punishment.

f) No child shall be deprived of clothing or sleep as punishment.

g) A child may be restricted to an unlocked bedroom for a reasonable period of time. While restricted, the child shall have full access to sanitary facilities.

h) A child may be temporarily restrained by a person physically holding the child if the child poses a danger to him or herself or to others.

i) The personal spending money of a child may be used as a constructive disciplinary measure to teach the child about responsibility and the consequences of his or her behavior. However, no more than 50% of the child's monthly personal spending money (as provided by parent(s), guardian or supervising agency) shall be withheld for any reason.

1) Withholding a child's monthly personal spending money shall occur only under the following circumstances:

A) For reasonable restitution for damages done by the child; or

B) For breaking the family's rules if the child has been given an oral warning that his or her spending money will be reduced for this infraction.

2) When a child's spending money has been reduced because he or she has broken a rule, the foster parent(s) shall keep the withheld money for the child and shall not use it for any other purpose. The foster

parent(s) shall give the child opportunities to earn the money back and shall explain to the child how the spending money can be restored.

j) Special or additional chores may be assigned as a disciplinary measure.
k) Privileges may be temporarily removed as a disciplinary measure.

Section 335.328 Emergency Care of Children

In the case of an emergency requiring the absence of the foster parent(s) from the foster home for a period of 24 hours or longer, the supervising agency must be notified so that appropriate arrangements may be made for the care of the child(ren).

Section 335.330 Release of Children

The foster parent(s) shall not release a foster child to anyone (including the child's own parent or parent(s) except as authorized by the supervising agency.

Section 335.332 Confidentiality of Information

Information concerning a child, his or her family and background shall be treated as confidential by all persons involved with the child.

Section 335.334 Required Written Consents

a) The supervising agency shall ensure that written consents from legally responsible persons (parent, court, or other legal custodian or guardian) are obtained for certain acts of a child or performance of certain acts on his or her behalf as required by

law, including but not limited to:
1) health care and treatment, including medical, surgical, psychiatric, psychological, and dental;
2) use of psychoactive drugs;
3) religious instruction and/or church attendance in a different faith than that of the parent(s) or guardian;
4) work programs, induction into the armed services, driving a car and car ownership;
5) visits, trips, or excursions which exceed 72 hours or include out-of-state travel;
6) use of photographs for publicity or other purposes; and
7) consent to marriage for child under age of 18.

b) Written consents shall be dated and limited to a specific period of time.

c) Any written or verbal consent or authorization given by persons referred or referenced in paragraph a) above or by others which conflict with any of the requirements of this Part is not valid.

Section 335.336 Records To Be Maintained

a) Records to be maintained by the foster family shall include:
1) the name and date of birth of the child, the legal guardian of the child, religion of the child, and arrangements for education of the child;
2) a record of immunizations the child has received; any physical problems, limitations, or allergies the child has; any current recommendations for special medical care;

   3) the name, address, and telephone number of the child's physician, guardian, and supervising agency;
   4) a daily log of medication prescribed and given;
   5) the names, addresses, and telephone numbers of persons to contact in case of emergency;
   6) the name(s) of person(s) to whom the child may be released; and
   7) a record of waiver(s) for immunizations, medical examinations, and treatment.

b) Records maintained by the foster family shall be kept current and shall be open to inspection by the supervising agency. All persons who have access to the foster family's records shall respect their confidential nature.

Section 335.338 Cooperation With the Supervising Agency and the Department

Authorized representatives of the supervising agency or the Department shall be admitted to the foster family home (during reasonable hours) to determine compliance with these rules and any conditions issued pursuant to these rules accompanying approval of the foster family home.

Section 335.340 Severability of This Part

If any court of competent jurisdiction finds that any rule, clause, phrase, or provision of this Part is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portions of this Part.

APPENDIX E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Decided August 10, 1993

Before

Hon. James B. Moran, District Judge

ELNORA CAMP, as Administrator of the Estate)
of ANTHONY YOUNG,)
Plaintiff,)
)
v.) No. 92 C 8424
)
GEORGE GREGORY,)
Defendant.)

JUDGMENT IN A CIVIL CASE

☐ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that defendant's motion to dismiss is granted.

August 10, 1993 — H. Stuart Cunningham
Date — Clerk

Willie A. Haynes

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ELNORA CAMP, as Administrator of the Estate of ANTHONY YOUNG,
Plaintiff,

v.

No. 92 C 8424

GEORGE GREGORY,
Defendant.

MEMORANDUM AND ORDER

This case is brought by Elnora Camp (Camp), as administrator for the estate of Anthony Young (Young), a deceased minor, against George Gregory (Gregory), a caseworker with the Illinois Department of Children and Family Services (DCFS). Gregory now moves to dismiss.

The complaint states very few facts. At some time prior to December 30, 1991, the Circuit Court of Cook County ordered Young's removal from the guardianship of his natural family and awarded guardianship to DCFS. Gregory was assigned to Young's case. Young died on December 30, 1991, while still a ward of the state. Apparently Gregory never found him a new home. The crux of the complaint is that Gregory violated Young's due process rights by allowing Young to remain in an unsafe living environment, and that Young died as a result.

The complaint does not indicate who killed Young or how he died, but it does allude to his "history of ongoing street-gang involvement." Reading between the lines, the court assumes that Young was a member of a gang and that DCFS was aware of it. The court also assumes that his death was gang-related. Unfortunately for plaintiff, however, a claim under 42 U.S.C. §1983 cannot be founded on a gang-related killing, at least not in the circumstances alleged. As a general rule, the state is not liable for failing to protect citizens from the harmful acts of private individuals. Martinez v. California, 444 U.S. 277 (1980). When the state holds a person against his or her will, the Constitution does impose a corresponding duty to protect the person's safety and well-being, and reasonable measures to protect against acts by private individuals must be taken, but the state does not assume such a duty unless it takes some sort of action. DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 199-200 (1989). The state's decision not to remove a child from an unsafe home, or to remove him and then return him, does not amount to a constitutional deprivation. Id. at 200-01.

Plaintiff attempts to distinguish this case from DeShaney by pointing out that in DeShaney there never was an official acknowledgement by the state that the injured boy's home was unsafe. In this case DCFS knew that Young's home was unsafe but returned him there anyway. However, the main point of DeShaney is that the state may not be held constitutionally liable for failure to address a problem that it did not create. The extent of the state's knowledge of the problem was not critical to the outcome of the case. Because the claim here, like the one in DeShaney, is founded on the state's failure to act, defendant's motion to dismiss is hereby granted.

JAMES B. MORAN
Chief Judge, U.S. District Court

August 10, 1993.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge: JAMES B. MORAN

Case Number: 92 C 8424

Date: September 10, 1993

Case Title: ELNORA CAMP ETC. VS GEORGE GREGORY

MOTION:

DOCKET ENTRY:

(1) [ ] Filed motion...
(2) [ ] Brief in support...
(3) [ ] Answere brief...
(4) [ ] Ruling/Hearing...
(5) [ ] Status Hearing...
(6) [ ] Pretrial conf...
(7) [ ] Trial...
(8) [ ] Bench Trial/Jury Trial...
(9) [ ] This case is dismissed...
(10) [X] [other docket entry]

Plaintiff's motion to amend complaint is being treated as a motion to reconsider or a 60(b)(6). The motion is granted pursuant to discussion in open court. Defendant's oral motion to dismiss the amended complaint is granted pursuant to discussion in open court.

[X] Docketing to mail notices

[WAH] courtroom deputy's initials

[2] number of notices

[9-13-93] date docketed

[9-13-93] date mailed notice

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